

PARTNERSHIP AGREEMENT TO ADVANCE RESILIENT WATER REUSE PROGRAMS IN SANTA CLARA COUNTY

This Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County (Agreement) effective December 10, 2019, is entered into by and between the City of Palo Alto, a California chartered municipal corporation (Palo Alto), the City of Mountain View, a California charter city and municipal corporation (Mountain View), and the Santa Clara Valley Water District, a Special District created by the California Legislature (Valley Water). Palo Alto, Mountain View, and Valley Water are referred to herein collectively as “Parties” or individually as “Party”.

RECITALS

WHEREAS, the governing bodies of Palo Alto, Mountain View and Valley Water have established policy goals for long term sustainability, which include maintaining effective use of existing infrastructure, lowering the carbon footprint of energy use, deploying water use efficiency programs, capturing local storm water, managing groundwater basins, and expanding use of recycled water; and

WHEREAS, the Parties have long-standing responsibilities and services to supply water to their customers in Santa Clara County (County) under both normal and drought conditions; and

WHEREAS, Valley Water and Palo Alto executed a Memorandum of Understanding on August 28, 2017, for the purpose of developing plans and studies to expand the production and use of recycled and purified water within the County; and

WHEREAS, Valley Water and Mountain View executed an agreement on October 11, 2017, to Assess the Feasibility of Water Reuse Alternatives, by working together and with other government agencies to expand production and use of recycled and purified water within the County; and

WHEREAS, the Parties seek to develop locally reliable water supply sources to offset supplies of water that would otherwise be imported via the Sacramento-San Joaquin River Delta and its tributaries, including the Tuolumne River and other mountain streams; and

WHEREAS, the Parties together are finalizing the Northwest County Recycled Water Strategic Plan to inform their respective policy makers of opportunities in the north-west portion of the County, including Palo Alto and Mountain View, for groundwater recharge, further recycled water development, and deployment of highly purified wastewater to supplement drinking water; and

WHEREAS, increasing the use of recycled water decreases the volume of wastewater effluent discharged to San Francisco Bay where harm to aquatic life can occur; and

WHEREAS, Valley Water has established a goal that at least 10 percent of total County water demands be supplied by recycled water by 2025; and

WHEREAS, decreasing the salinity of the treated wastewater from the Regional Water Quality Control Plant (RWQCP) through further treatment will allow it to be used on more types of flora, especially redwood trees, thereby increasing its overall use; and

WHEREAS, Palo Alto and Mountain View benefit from the improved recycled water quality, which will facilitate use of recycled water on a wider range of landscaping and allow the Cities to expand their recycled water distribution infrastructure; and

WHEREAS, the Parties recognize the importance of source control for water reuse and are studying measures to address the issue; and

WHEREAS Valley Water is currently researching and piloting both indirect and direct potable reuse technologies within the County; and

WHEREAS, decreasing the salinity in Recycled Water used for irrigation keeps that salt and other constituents out of the soil and ultimately out of the groundwater; and

WHEREAS, the Parties recognize that well-purposed and managed partnerships can serve the public interest more effectively than individual efforts to develop and manage water supplies; and

WHEREAS, the Parties desire to cooperate to achieve the most cost effective, environmentally beneficial utilization of treated wastewater in the County.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

AGREEMENT

ARTICLE A. Definitions

As used in this Agreement, the following terms have the following meanings.

- (a) Agreement: The December 10, 2019, Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County between Palo Alto, Mountain View, and Valley Water.
- (b) CEQA: California Environmental Quality Act.
- (c) Designated Representatives: Employees or officials designated in writing by each of the respective Parties to serve as representatives for purposes of this Agreement. In the absence of such written notice, the Designated Representatives shall be the Valley Water Chief Executive Officer, the Mountain View City Manager, and the Palo Alto City Manager.
- (d) Dispute Resolution Procedure: The alternative dispute resolution process to be used for disputes arising out of this Agreement. The procedure is set forth in more detail in Section 23 below.
- (e) Effective Date: December 10, 2019 shall be the date this Agreement is effective.
- (f) Effluent: Tertiary treated wastewater from the RWQCP that meets National Pollutant Discharge Elimination System permit requirements.
- (g) Effluent Transfer Option: Valley Water's option to secure Effluent, as described in Section 11 of this Agreement.
- (h) Enhanced Recycled Water: Non-potable water produced by the Local Plant which is blended with Recycled Water from the RWQCP.
- (i) Local Plant: A salinity removal unit to produce 1.25 MGD Enhanced Recycled Water for the RWQCP Service Area.
- (j) MGD: Million gallons per day, expressed as an annual average, unless otherwise noted.
- (k) Minimum Flow Delivery: An annual average of 9 MGD of Effluent to be supplied by the RWQCP to Valley Water, consistent with Appendix 1.
- (l) NEPA: National Environmental Policy Act.
- (m) O&M: Operation and maintenance.
- (n) Parties: The City of Palo Alto ("Palo Alto"), the City of Mountain View ("Mountain View"), and the Santa Clara Valley Water District ("Valley Water").

- (o) Recycled Water: Effluent that is treated to meet California Code of Regulations Title 22 requirements for non-potable water.
- (p) Regional Plant: A purification treatment facility capable of treating Effluent flows of 9 MGD or greater for the purpose of regional water supply benefit.
- (q) Regional Program: Valley Water's program to derive benefits from the Effluent under the terms of this Agreement.
- (r) Remaining Funds: Funds available for use by the RWQCP Partners pursuant to Section 5(f).
- (s) Responsible Agencies: Responsible Agencies are agencies other than the lead agency, that have some discretionary authority for carrying out or approving a project, as defined in the California Environmental Quality Act and its associated regulations.
- (t) RWQCP: The Palo Alto Regional Water Quality Control Plant.
- (u) RWQCP Partners: The cities of Palo Alto, Mountain View, and Los Altos; the Town of Los Altos Hills; the East Palo Alto Sanitary District and Stanford University.
- (v) RWQCP Service Area: RWQCP Service Area includes the service areas of the RWQCP Partners.
- (w) Startup: The point in time when Valley Water begins to receive Effluent, following initial testing and commissioning, or the point in time when Valley Water begins to pay for the Effluent as part of its Regional Program, pursuant to this Agreement, whichever is earlier.
- (x) Term: The total duration of the Agreement as described in Section 1 of this Agreement.
- (y) Water Supply Option: Palo Alto's and Mountain View's option to secure additional water supply as described in Section 19 of this Agreement.

ARTICLE B - General Provisions

1. Term.

This Agreement shall be in effect on December 10, 2019. The Term of the Agreement shall be dependent upon the actions of the Parties pursuant to Articles C and D as set forth more particularly below:

- a. If Valley Water exercises its Effluent Transfer Option within 13 years of the Effective Date and the Local Plant is constructed in accordance with Section 5, then the Term of this Agreement shall be for as long as Valley Water is required to or elects to make annual payments for the Effluent (pursuant to Section 12, Section 17 and Section 20), up to a maximum of 63 years from Startup (not to exceed 76 years from the Effective Date). If Valley Water exercises its rights under Section 20, then the Term shall expire 30 years after the commencement date of operation of the Local Plant or the actual date of termination under Section 20 if later.
- b. If Valley Water exercises its Effluent Transfer Option within 13 years of the Effective Date and the Local Plant is not constructed in accordance with Section 5, then the Term of this Agreement shall be for as long as Valley Water is required to or elects to make annual payments for the Effluent (pursuant to Section 12, Section 17 and Section 20), up to a maximum of 63 years from Startup (not to exceed 76 years from the Effective Date). If Valley Water exercises its rights under Section 20, then the Term shall expire 18 years after the Effective Date or the actual date of termination under Section 20 if later.
- c. If Valley Water does not exercise the Effluent Transfer Option and the Local Plant is constructed in accordance with Section 5, the Term shall expire 30 years after the commencement date of operation of the Local Plant.
- d. If Valley Water does not exercise the Effluent Transfer Option and the Local Plant is not constructed in accordance with Section 5, the Term of this Agreement shall expire 18 years after the Effective Date.

2. Governance.

A joint committee comprised of elected officials from Valley Water, Palo Alto and Mountain View will be established to review and accept updates on the design, construction, operation and regulatory compliance of the Local Plant and the Regional Plant if the Regional Plant is located in Palo Alto. If the Regional Plant is not located in Palo Alto then the aforementioned committee will operate only with respect to the Local Plant. The committee's role will be advisory to staff and governing bodies of the Parties.

ARTICLE C - Local Plant

3. Local Plant Beneficiaries

The Parties agree that the Local Plant will be developed by Palo Alto and operated for the benefit of Recycled Water customers of Palo Alto, Mountain View, and potentially

other RWQCP Partners. However, Palo Alto and Mountain View shall ensure that funding from Valley Water shall only be used to benefit users in Santa Clara County.

4. Local Plant Ownership, Operation and Maintenance, and Location

The Parties agree that Palo Alto shall own the Local Plant and be responsible for its design, construction, operation, maintenance, ultimate decommissioning, and site restoration. The Local Plant shall be located within the RWQCP site.

Palo Alto, as the Lead Agency under CEQA for the Local Plant, has prepared an Addendum to the City of Palo Alto Recycled Water Project Environmental Impact Report certified and adopted in 2015 evaluating the environmental impacts of the Local Plant.

5. Local Plant Capital Costs

- a. Valley Water's Contribution. The Local Plant capital cost is estimated to be \$20 Million (2019 dollars). Valley Water's contribution shall be \$16 Million (2019 dollars), escalated annually based on Valley Water's Yield-to-Maturity Rate as published in Valley Water's Quarterly Performance Reports to the Board of Directors for the fourth quarter of each fiscal year (hereinafter referred to as "\$16 Million Contribution"). Valley Water's \$16 Million Contribution towards the Local Plant and, if applicable, other projects described in Section 5(f), in conjunction with the Annual Option Payments set forth in Section 6, shall constitute full and final consideration for its right to secure the Minimum Flow Delivery.
- b. Palo Alto and Mountain View's Contribution. Subject to Section 5(d), Palo Alto's and Mountain View's combined capital contribution shall be the difference between the actual cost of the Local Plant and Valley Water's \$16 Million Contribution.
- c. Benefits of Grant Funding. Any federal grant funding sought by Palo Alto or Mountain View, or both, for the Local Plant shall not include the San Jose Area Water Reclamation and Reuse Program under the Title XVI Program. The benefits of any grant funding for the Local Plant shall be split by Palo Alto and Mountain View as determined in and through a separate agreement between Palo Alto and Mountain View.
- d. In the Event of Elevated Costs. Should the lowest responsible construction bid, or any other circumstance, result in a Local Plant total project cost above the \$20 Million (2019 dollars) estimate, Palo Alto and/or Mountain View may elect to cover the increase (above Valley Water's \$16 Million contribution) independently, without an additional contribution from Valley Water. If Palo Alto and/or Mountain View are unable to identify a funding source or secure low interest rate loans to sufficiently cover costs above the \$20 Million total project cost estimate, Palo Alto

or Mountain View or both may request to meet and confer with Valley Water to potentially modify this Agreement. However, absent such a modification to the Agreement, Valley Water's contribution shall be limited to the \$16 Million Contribution.

- e. In the Event of No Local Plant. If Palo Alto and Mountain View elect not to proceed with or complete construction of the Local Plant within 13 years of the Effective Date, they shall provide written notice to Valley Water within this 13-year period and they shall still receive the \$16 Million Contribution from Valley Water so long as such funds are allocated and utilized consistent with the provisions of Sections 5(f) and 5(g).
- f. Possible Alternative to Local Plant. If the Local Plant is not constructed, any portion of Valley Water's \$16 Million Contribution not utilized for the capital of the Local Plant, defined as Remaining Funds, will be available for other projects, specified below. Palo Alto and Mountain View will consult with all RWQCP Partners to develop a plan for expending the Remaining Funds and notify Valley Water prior to expenditure of Remaining Funds. Remaining Funds will be allocated by Palo Alto for projects specified below that benefit all RWQCP Partners that have committed their Effluent to Valley Water for the Term of this Agreement. However, the projects specified below must be located within Santa Clara County. Eligible projects for receipt of the Remaining Funds shall be, in order of preference:
 - i. Recycled Water facilities at the RWQCP owned and operated by one or more RWQCP Partners.
 - ii. Other water supply projects, including but not limited to water conservation capital projects, owned and operated by a RWQCP Partner.
- g. Time Frame for Expenditure of Funds. The time frame for any expenditure of funds for reimbursement pursuant to this Section 5 shall extend from the Effective Date to eighteen (18) years from the Effective Date. Within this time frame, Palo Alto must present to Valley Water all invoices for expenditure of funds by itself and other RWQCP Partners pursuant to this Section. Valley Water shall not reimburse any invoices presented beyond 18 years from the Effective Date. Palo Alto's failure to seek reimbursement within this timeframe shall not extinguish or otherwise impact Palo Alto's and Mountain View's obligations under Article D herein.
- h. Invoicing and Payments. Monthly, Palo Alto shall invoice Valley Water for project costs expended pursuant to this Section 5, including documentation of work performed by itself and any other RWQCP Partner. Invoices shall not include

RWQCP Partners' staff costs and administrative overhead. Valley Water shall pay such valid Palo Alto invoices within thirty days of receipt.

6. Annual Option Payments Prior to Startup of Regional Plant

- a. Amount of Payment. Valley Water agrees to pay to Palo Alto \$200,000 per year (2019 dollars) ("Annual Option Payment") from the Effective Date, until (a) June 1, 2033, or (b) at Startup, whichever occurs first. The amount of the Annual Option Payment shall be increased annually based on the annual average (previous twelve months) of the CPI-All Items for the San Francisco-Oakland-Hayward, California area published by the United States Department of Labor-Bureau of Labor Statistics (<https://data.bls.gov/PDQWeb/cu>), beginning on the first anniversary of the Effective Date.
- b. Timing of Payment. Valley Water shall provide the Annual Option Payment to Palo Alto by June 1 of each year beginning June 1, 2020.
- c. Allocation of Payment.
 - i. Fifty percent (50%) of the Annual Option Payment will be allocated to Palo Alto and Mountain View.
 - ii. Palo Alto will distribute the remaining 50% of the Annual Option Payment to the RWQCP Partners (other than Palo Alto and Mountain View) that have committed their Effluent for the Term of this Agreement by January 31 of the year that the Annual Option Payment is made. These funds will be distributed proportionally by the amount of Effluent to be contributed. If no other RWQCP Partners commit their Effluent by January 31 of that year, this 50% of the Annual Option Payment will be allocated to Palo Alto and Mountain View.
 - iii. Palo Alto shall ensure that the Annual Option Payments are utilized for water supply or water reuse related projects in the RWQCP Service Area.

7. Reverse Osmosis Concentrate Produced by the Local Plant

Palo Alto is responsible for securing any necessary changes in its National Pollution Discharge Elimination System (NPDES) permit to accommodate reverse osmosis concentrate discharge from the Local Plant to receiving waters under the jurisdiction of federal and state agencies.

8. Local Plant Naming and Tours

- a. Valley Water reserves the right to name the Local Plant, including signage on site. Signage may be subject to approval by the appropriate Palo Alto decision maker or body, of which will not be unreasonably withheld.

- b. With 48-hour advance notice to the RWQCP plant manager or his/her designee, designated Valley Water personnel may lead tours of the Local Plant by Valley Water employees or members of the public. Valley Water-led tours shall be subject to prior and ongoing review by the RWQCP plant manager or his/her designee to ensure that the tours are conducted safely and with minimal disruption to other RWQCP activities, and that parking of private vehicles by tour attendees is consistent with RWQCP requirements. Valley Water will submit a plan or program for tours of the Local Plant for the RWQCP plant manager's review and approval and shall conduct tours consistently with the approved plan or program.

9. On-site Research at the Local Plant

Valley Water may desire to conduct research work on treatment processes at the Local Plant, including installation of pilot test equipment. Valley Water-managed research teams may include personnel from RWQCP Partners, universities, private companies engaged in research, or other research laboratories. Palo Alto agrees that it will make its best effort to enable research at the Local Plant and not unreasonably deny or constrain Valley Water proposals to conduct such research. Valley Water agrees to share results of such research with Parties, upon request. In conducting such research, Valley Water shall not significantly disrupt operation of the Local Plant or the RWQCP, nor cause or result in significantly decreased flows, RWQCP upsets, or permit violations.

10. Term of Local Plant Operation

Palo Alto agrees to operate the Local Plant for a continual period of at least 30 years, unless the Parties all agree to cease operations sooner.

ARTICLE D - Effluent Delivery to Valley Water

11. Effluent Transfer Option

- a. Valley Water shall have the right to exercise an exclusive Effluent Transfer Option to secure from Palo Alto and Mountain View (or from the RWQCP Partners in aggregate) a Minimum Flow Delivery of an annual average of 9 million gallons per day (MGD) of Effluent (approximately 10,000 AFY), as described in Appendix 1. Valley Water's exercise of this Effluent Transfer Option shall be subject to CEQA review. Valley Water may elect to develop a Regional Plant to receive and treat such Effluent or may instead receive the Effluent for development of other beneficial use in Santa Clara County as part of its Regional Program.

- b. This Agreement shall not bind or commit Valley Water to any definite course of action with respect to the Effluent Transfer Option and shall not restrict Valley Water from considering any alternatives, including a no-action alternative, or requiring any feasible mitigation measures when considering whether to receive Effluent delivery.
- c. If Valley does not exercise its Effluent Transfer Option within 13 years of the Effective Date all rights and obligations under Article D shall terminate.

12. Timing of Valley Water's Effluent Transfer Option

- a. Valley Water's period to exercise the Effluent Transfer Option and to accomplish Startup extends for thirteen years from the Effective Date. Valley Water may exercise the Effluent Transfer Option by written notification by its Designated Representative to the Designated Representatives of Palo Alto and Mountain View. Before Startup, as needed, Palo Alto will work with Valley Water to provide adequate Effluent for testing and commissioning purposes.
- b. Notwithstanding Section 12 (a), Valley Water may elect to defer acceptance of the Effluent as part of its Regional Program. After 10 years from Startup, if the Parties have not agreed to amend this Agreement and Valley Water has not begun taking the Effluent, all rights and obligations under Article D shall terminate; however, all other Articles of the Agreement shall not be affected and shall remain in full force and effect.

13. Effluent to Valley Water if Valley Water Exercises its Effluent Transfer Option

- a. Flow Parameters. The Minimum Flow Delivery is defined as 9 million gallons per day (MGD) of annual average flow of Effluent that will be provided to Valley Water, predicated upon Valley Water exercising its Effluent Transfer Option, from Startup through the Term of this Agreement, consistent with the parameters described in Appendix 1, subject to the provisions of this Section 13. During the planning or design phases of the Regional Program, Valley Water may identify one or more other Effluent flow parameters required for operation of the Regional Program. In this case, these flow parameters shall be developed consistent with RWQCP data provided by Palo Alto, and Appendix 1 will be amended accordingly subject to approval by Palo Alto's, Mountain View's and Valley Water's Designated Representatives, which approval shall not be unreasonably withheld.
- b. Water Quality. Palo Alto shall ensure that the Effluent meets all applicable federal and state water quality standards for wastewater discharge to the lower San Francisco Bay. If operational changes are anticipated at the RWQCP that could

adversely affect the quality of Effluent, Palo Alto will provide notice to Valley Water and will work in good faith to minimize potential impacts to Regional Program.

- c. Supply Shortages Due to Drought. During water supply shortages such as droughts, Palo Alto and Mountain View will take certain actions to increase the volume of Effluent delivered to Valley Water (within the Minimum Flow Delivery) described as follows:
 - i. Palo Alto will use best efforts to temporarily modify operations to maximize the volume of Effluent delivered to Valley Water, while complying with all legal and federal, state, and local regulatory requirements and completing any legally mandated environmental review under CEQA (and NEPA, if applicable). Such modifications may include, but shall not be limited to, temporary decreases to environmental flows.
 - ii. Palo Alto and Mountain View will implement the appropriate stages of their Water Shortage Contingency Plans and will use best efforts to reduce non-critical use of non-potable Recycled Water. Critical uses may include health and safety and preservation of tree canopies.
- d. Effluent Commitments. Palo Alto will make good faith efforts to sign separate agreements with other RWQCP Partners to commit their shares of Effluent for delivery to Valley Water for a period consistent with the Term of this Agreement. Good faith efforts include sending letters to the appropriate representatives of the RWQCP Partners within 3 months of the Effective Date. Even if one or more of the other RWQCP Partners does not commit their Effluent, Palo Alto and Mountain View will ensure that the Minimum Flow Delivery will be met.
- e. Annual Availability of Excess Effluent. Each year following Startup, Palo Alto and Mountain View will notify Valley Water by February 1 to determine what, if any, amount of Effluent will be available to deliver to Valley Water in excess of the Minimum Flow Delivery in the following fiscal year and to describe any conditions that may apply to such delivery. On an annual basis, by February 1, any commitments for delivery in excess of the Minimum Flow Delivery for the upcoming fiscal year shall be made in writing by the Designated Representatives of Mountain View and Palo Alto.
- f. Long-Term Availability of Excess Effluent. At any time, the Parties' Designated Representatives may determine that more Effluent is available beyond the Minimum Flow Delivery for a definitive number of years in the future within the Term of this Agreement. The Parties agree they will consider such increases at the request of any Party, and this Agreement may be amended to implement such increases.

- g. Proportional Reduction of Effluent Due to Reduced Flows. Subject to Section 13 (c), Mountain View and Palo Alto shall receive minimum supplies of Enhanced Recycled Water as follows: Mountain View 2.5 MGD and Palo Alto 1.0 MGD (currently estimated to be produced from 3.25 MGD and 1.3 MGD of Effluent, respectively). If Mountain View and Palo Alto are using more than 2.5 MGD and 1.0 MGD of Enhanced Recycled Water, respectively, these volumes shall be reduced to 2.5 MGD and 1.0 MGD, respectively, before Valley Water's Effluent delivery is reduced below the Minimum Flow Delivery. If insufficient Effluent is available to meet Mountain View's and Palo Alto's minimum Enhanced Recycled Water supplies and meet Valley Water's Minimum Flow Delivery, all three volumes shall be reduced proportionally based on the volumes of Effluent required to produce them. In no case shall Mountain View's or Palo Alto's Enhanced Recycled Water reduction exceed 30% below 2.5 MGD and 1.0 MGD, respectively, unless otherwise agreed to by the Parties.
- h. Meet and Confer Due to Reduced Effluent Flows. If the amount of Effluent Valley Water requests, up to the Minimum Flow Delivery, is not met, the Parties shall meet and confer for the purpose of identifying and implementing feasible solutions to any supply shortfall, including the potential to extend the Term of the Agreement to make up for lost Effluent delivery.

14. Regional Plant Location

- a. Possible Locations. If Valley Water pursues a Regional Plant as part of its Regional Program, it is the preference of the Parties to locate the Regional Plant in Palo Alto. As such, Valley Water and Palo Alto shall evaluate the feasibility of all potential locations in Palo Alto, including: within the fence line of the RWQCP; at the Measure E site; or a yet to be determined location. If it is determined by Valley Water that it is not feasible or economical to locate the Regional Plant in Palo Alto, the Effluent may be conveyed for reuse by Valley Water to another location. The point of delivery of the Effluent to Valley Water shall be at the RWQCP, or another location mutually agreed between Valley Water and Palo Alto.
- b. Local Cooperation. If Valley Water notifies Palo Alto that it intends to locate a Regional Plant in Palo Alto, Palo Alto shall cooperate with Valley Water in identifying ways to accommodate a Regional Plant to the maximum extent possible within the boundary of the RWQCP or adjacent to the RWQCP boundary pending siting evaluation results. Palo Alto will also cooperate with Valley Water as it explores siting an appropriate sized water tank, to balance inbound fluctuating flows and produce a steady flow for treatment. Valley Water

shall negotiate with Palo Alto to share costs between Palo Alto and Valley Water for use of the RWQCP site, including modification of existing facilities.

- c. Measure E Site Evaluation. In the event that Valley Water determines that the Measure E site adjacent to the RWQCP facility is the best location for a Regional Plant, and no extenuating circumstances (including, but not limited to, any environmental impacts identified through CEQA review) have been identified by Palo Alto, Palo Alto's staff will recommend to Palo Alto Council that the Council place a measure on the ballot to allow this use. If a Regional Plant is located, at least in part, on the Measure E site, Valley Water may lease the land from Palo Alto at a rate based on the then-current zoning, anticipated to be for "public facilities." A separate lease agreement will be required subject to approval by the Palo Alto City Council or Designated Representative.
- d. Permit Processing. Palo Alto and Mountain View agree to process expeditiously, in accordance with regular city processes, Valley Water's complete non-discretionary permit applications for a Regional Plant.

15. Regional Plant/Conveyance Facilities Ownership, Capital, Operation and Maintenance Costs

Subject to Valley Water exercising the Effluent Transfer Option, Valley Water may own and construct a Regional Plant and conveyance facilities to and from the Regional Plant (preliminary cost of \$300 Million based on a comparison of like projects), or conveyance facilities to take the Effluent elsewhere. Valley Water will be responsible for all capital and O&M costs for a Regional Plant and conveyance facilities.

16. Other Development Commitments by the Parties

- a. Development, Operation & Maintenance. In the event that a Regional Plant is to be located in Palo Alto, Palo Alto shall support Valley Water's chosen development and O&M approach for the Regional Plant. Approaches under consideration by Valley Water include, but are not limited to, a design-build method with Valley Water responsibility for O&M; or a public-private partnership in which, for example, Valley Water may partner with one or more private entities to provide financing, design, construction, and O&M.
- b. Support of Regional Program. Additionally, in the event that Valley Water notifies Palo Alto and Mountain View that it intends to develop a Regional Plant in Palo Alto, Palo Alto and Mountain View shall provide, when requested by Valley Water, written support to State and federal agencies to which Valley Water seeks grant funding or low-interest loans for the Regional Plant, and city staff shall participate in meetings with State and federal agencies for these purposes.

- c. Environmental Documentation. The Parties to this Agreement anticipate that Valley Water will be the Lead Agency and Palo Alto will be a Responsible Agency under CEQA/NEPA for a Regional Plant. Any legally mandated environmental review shall be completed prior to approval and development of the Regional Plant. The Parties shall work together to facilitate compliance under CEQA (and NEPA if applicable) for the development of the Regional Plant. As part of this process, the Parties agree to provide timely notice, review, and responses.

17. Annual Payments for Effluent

- a. Initiation and Allocation of Payments. Upon Startup, Valley Water will pay Palo Alto \$1,000,000 per year for the Minimum Flow Delivery during the Term of this Agreement. Valley Water shall make payments on a fiscal year basis (July – June). Valley Water’s first payment following Startup shall be prorated based on Effluent received or, if Effluent deliveries have not started, shall be \$1,000,000 prorated based on the number of months left in the fiscal year. The \$1,000,000 annual amount referred to in this Section is in 2019 dollars, and shall be adjusted July 1 of each year by the annual average (previous 12 months) of the CPI-All Items for the San Francisco-Oakland-Hayward, California area published by the United States Department of Labor-Bureau of Labor Statistics (<https://data.bls.gov/PDQWeb/cu>). Valley Water’s payments will be made by August 31 for the preceding fiscal year.
- b. Allocation of Payments. Palo Alto will allocate these funds to RWQCP Partners that have committed their Effluent to Valley Water by January 31 proportionally based on the RWQCP Partner’s share of the total Effluent committed through the Term of this Agreement.
- c. Duration of Payments. Valley Water’s payments for Effluent pursuant to this Article shall continue through the Term of this Agreement unless this Article D is terminated earlier subject to Sections 12(b) or 20. If Article D of the Agreement is so terminated, Valley Water’s payment for Effluent in the year it is terminated shall be prorated based on the termination date and the proportion of days lapsed in the fiscal year, and Valley Water’s obligation to make this last payment shall survive the termination of Article D.
- d. Additional Wastewater Treatment Costs. If implementation of the Regional Program is deferred pursuant to Section 12 (b) and, during that period of deferral, Palo Alto incurs incremental wastewater treatment costs to meet new NPDES requirements adopted after Startup, Valley Water shall pay Palo Alto a proportion of the annual O&M costs, not capital costs, for such incremental wastewater treatment based on the percentage of Minimum Flow Delivery relative to the total volume of wastewater effluent produced over that period. However, Valley

Water's obligation to pay for annual O&M costs under this Sub-Section shall not begin until the five-year anniversary of Startup and shall cover the period after that date. Palo Alto shall invoice Valley Water, detailing the basis of the costs for the preceding year, after the end of the sixth year after Startup and each year thereafter until Valley Water begins to take delivery of Effluent or until Article D of the Agreement is terminated pursuant to Section 20. Valley Water's obligation to pay such costs shall be capped at \$150,000 per year (in 2019 dollars, adjusted July 1 of each year by the annual average (previous 12 months) of the CPI-All Items for the San Francisco-Oakland-Hayward, California area published by the United States Department of Labor-Bureau of Labor Statistics (<https://data.bls.gov/PDQWeb/cu>)).

- e. Payment Prorating. If the quantity of Effluent made available by Palo Alto to Valley Water in any given fiscal year falls below the Minimum Flow Delivery the payment for that year shall be prorated accordingly. If the Minimum Flow Delivery is made available but Valley Water accepts less than the Minimum Flow Delivery, Valley Water shall be responsible for the full \$1,000,000. If Valley Water requests and receives more than the Minimum Flow Delivery, Valley Water's payment to Palo Alto shall be prorated accordingly.

18. Reverse Osmosis Concentrate Produced by a Regional Plant in Palo Alto

In the event that a Regional Plant is located in Palo Alto, Palo Alto shall evaluate operating strategies and make best efforts to accomplish any necessary changes in its NPDES permit to accommodate reverse osmosis concentrate discharge from the Regional Plant to receiving waters under the jurisdiction of federal and state regulators. Palo Alto staff shall include Valley Water staff in its planning and negotiations with the regulators. To the extent that discharge of the reverse osmosis concentrate to receiving waters via Palo Alto's wastewater outfall is not feasible and acceptable to the regulators, Valley Water shall evaluate and implement alternative reverse osmosis concentrate management measures acceptable to Palo Alto, if within the Palo Alto's jurisdiction. Valley Water shall pay the costs of treating the reverse osmosis concentrate to meet applicable state and federal requirements of and any alternative reverse osmosis concentrate management measures. The Parties acknowledge that a separate agreement may be needed to address management of reverse osmosis concentrate.

19. Water Supply Option for Palo Alto and Mountain View

- a. Volume and Timing of Request. Beginning one year from the Effective Date, at their discretion, Palo Alto or Mountain View or both shall each have an opportunity to provide Valley Water a notification of the need for additional water to meet demands in their respective service areas. The written notification shall include the amount of potable water or non-potable water, or both, requested, up to the following maximum amounts: Palo Alto may request an annual average of

up to 3.0 MGD and Mountain View may request an annual average of up to 1.3 MGD. Palo Alto and Mountain View may make multiple notifications regarding the need for additional water, but the cumulative total of the additional water requested shall not exceed the respective maximum amounts (3.0 MGD for Palo Alto and 1.3 MGD for Mountain View) over the Term of the Agreement. The notification may also include an indication of a maximum cost for the water in the first year. Valley Water will make its best effort to develop a proposal that includes at least one supply within that maximum cost for the first year.

- b. Valley Water Response. Within three (3) months of receiving the written notification from Palo Alto or Mountain View or both, Valley Water will provide an estimate of the incremental costs to Valley Water to prepare a proposal for the requested water. The requesting party (Palo Alto or Mountain View or both) will respond to Valley Water's cost estimate within four (4) months. After receiving written approval from the requesting party (Palo Alto or Mountain View or both) accepting the estimated cost for Valley Water to do so, Valley Water will have up to four (4) years from receipt of the original request to prepare a water supply proposal to the requesting party (Palo Alto or Mountain View or both). Parties will meet periodically as requested by any Party during this four (4) year period to discuss the request and the proposal being developed. Valley Water's proposal will include a description of the water supply, including the cost, payment schedule, and any conditions related to the supply to the requester (Palo Alto or Mountain View or both). Valley Water will submit quarterly cost invoices for its work in preparing the proposal and the requesting party (Palo Alto or Mountain View or both) will reimburse Valley Water within 30 days.
- c. Cost Components. Valley Water's cost estimate in its proposal shall be limited to Valley Water's costs, including all costs associated with the water supply, such as but not limited to: facility costs, commodity costs, and any wheeling fees. Valley Water shall not be required to subsidize the cost of the water in order to meet the maximum cost pursuant to Section 19 (a). The proposal shall include or allow for subsequent increases in cost after the first year based upon Valley Water's costs.
- d. Acceptance or Denial of Proposal. The requester (Palo Alto and/or Mountain View) will have up to twelve (12) months from receiving Valley Water's proposal to provide written notification that they accept or decline this proposal, unless a shorter time period is one of the conditions required by Valley Water. For example, a shorter time frame may be required if Valley Water's proposal involves a fleeting opportunity with third parties in which a commitment is needed in less than 12 months. In the event that Valley Water prepares a proposal with a time period for acceptance of less than 12 months, it shall also, with the requesting party's concurrence, proceed to develop a separate proposal for which the acceptance time period is up to twelve (12) months.

- e. Reinitiating a Request. If the requesting party (Palo Alto or Mountain View or both) declines Valley Water's proposal or fails to accept it within the time prescribed in Section 19(d), starting 5 (five) years from declining the previous opportunity or five years after the time to accept the proposal expires, whichever is earlier, the requesting party (Palo Alto or Mountain View or both) may reinitiate the process as described in Section 19(a)-(d). This sequence of proposals and potential denials, including the five (5) year period between the denial (or expiration of time in which to accept) and the next request, can be repeated throughout the Term of the Agreement. Notwithstanding the minimum five-year interval between a proposal declined or not timely accepted by the requesting party (Palo Alto or Mountain View or both) and a subsequent opportunity to request a proposal, Valley Water shall have discretion to consider a request by Palo Alto or Mountain View to develop a proposal for them after a period of less than five years since they declined a prior Valley Water proposal or the time in which to accept it expired.
- f. Delivery of Water. If the requesting party (Palo Alto or Mountain View or both) accepts Valley Water's proposal, Valley Water will have up to ten (10) years from the acceptance date to begin delivery of the water to the requester (Palo Alto or Mountain View or both) at cost. All water provided by Valley Water may only be utilized by the requesting party (Palo Alto or Mountain View or both) within their respective service areas and Valley Water's obligation to provide the water to Palo Alto or Mountain View or both expires at the end of the Term of this Agreement or any separately date agreed upon in writing. The Parties shall develop detailed terms and conditions for Valley Water's water supply delivery to them in a separate agreement, shall complete any environmental review legally required for adoption of such agreement, and shall provide environmental documentation to support CEQA findings, for approval by Parties' governing bodies prior to commencement of delivery of water to them under this Section. Such separate agreement may have a term that extends beyond the Term of this Agreement and may include additional conditions dependent upon the Effluent transfer.
- g. In the Event of No Regional Program. If Valley Water determines Startup of the Regional Program will not occur within thirteen (13) years of the Effective Date and the Parties have not agreed to further extend this timeline, Palo Alto and Mountain View shall no longer have the ability to request a potable and/or non-potable water supply from Valley Water.

20. Severability and Voidance of Effluent Transfer Provisions by Valley Water

Commencing thirteen years after the Effective Date, Valley Water may terminate the rights and obligations under Article D of this Agreement at its sole discretion by

providing Palo Alto and Mountain View with at least five years' written notice if Valley Water has commenced receiving Effluent or at least one years' written notice if Valley Water has not commenced receiving Effluent. If the provisions of this Section 20 are exercised by Valley Water, Article D shall be terminated at the conclusion of the notice period and shall be of no further effect; however, all other Articles of the Agreement shall not be affected and shall remain in full force and effect.

ARTICLE E – SALE OF RWQCP OR THE REGIONAL PLANT DURING TERM

21. Sale of RWQCP During Term of Agreement

Palo Alto agrees that it shall not sell or attempt to sell the RWQCP to any third-party unless Valley Water is first offered the right to purchase the RWQCP at fair market value to be determined by an independent third-party consultant qualified in the wastewater or water industry. Valley Water shall have six months after a fair market value has been determined to consider this purchase, and Palo Alto may only pursue the sale to third parties following the expiration of this six-month period or receipt of Valley Water's written notice that it does not intend to purchase the RWQCP. Upon Valley Water's expression of intent to purchase the RWQCP, Palo Alto shall provide Valley Water with an additional twelve months to complete any financing necessary for the purchase.

The provisions of Article D herein (Effluent Delivery to Valley Water), shall survive any sale of the RWQCP to a third-party during the Term, and Palo Alto shall include as an express condition in the sale of the RWQCP to a third-party the requirement that the third party assume the obligations of this Agreement for the remainder of the Term. Valley Water shall constitute a third-party beneficiary to any agreement between Palo Alto and a third-party for the sale of the RWQCP.

22. Sale of Regional Plant

Valley Water agrees that if a Regional Plant is located in Palo Alto and if Valley Water decides to cease its operation of the Regional Plant, it shall not sell or attempt to sell the Regional Plant to any third-party unless Palo Alto is first offered the right to purchase the Regional Plant at fair market value to be determined by an independent third-party consultant qualified in the wastewater or water industry. Palo Alto shall have six months after a fair market value has been determined to consider this purchase, and Valley Water may only pursue the sale to third parties following the expiration of this six-month period or receipt of Palo Alto's written notice that it does not intend to purchase the Regional Plant. Upon Palo Alto's expression of intent to purchase the Regional Plant, Valley Water shall provide Palo Alto with an additional twelve months to complete any financing necessary for the purchase.

ARTICLE F – OTHER PROVISIONS

23. Dispute Resolution Procedure

The process by which 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 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 fourteen (14) 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 Palo Alto and Mountain View). 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) If the dispute remains unresolved after forty-five (45) calendar days from their receipt of the matter for resolution, and any necessary Party is not willing to continue negotiations, the Parties agree to submit the dispute to mediation. Any statute of limitations shall be tolled from the time the matter is submitted to mediation until the mediation process has concluded.
- d) If the Parties are not able to agree on a mediator, any necessary Party may request the American Arbitration Association or other acceptable mediation service to nominate a mediator. The Parties will share the cost of the mediator equally.
- e) In the event mediation 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.

24. Force Majeure.

Neither Palo Alto nor Mountain View shall be liable for delays or failures in performance of its obligations under Article D of this Agreement that arise out of or result from causes beyond its or their control, including without limitation, the occurrence or threat of the following: an act of God or public enemy; an act of civil or military authorities; a fire, flood, earthquake or other natural disaster; an explosion; a war or act of terrorism; an epidemic or pandemic; a national or state emergency; a strike; a lockout; a riot or civil unrest; a freight embargo; delays of common carriers; acts or orders of governmental authorities; impact of governmental statutes, regulations, permits or orders imposed or issued after the effective date of this Agreement; unavailability of required labor or materials; inability to obtain funding due to a financial crisis; a regulatory agency's failure to issue a required permit or other approval despite submittal of a complete application; litigation not initiated by Palo Alto; and any other events or circumstances not within the reasonable control of the affected Party whether similar or dissimilar to any of the foregoing. If Palo Alto is required to take or forego certain actions to maintain compliance with its NPDES permit and other regulatory requirements, such acts or omissions shall not be considered to be within Palo Alto's reasonable control and shall be excused under this Section 24.

25. Audit.

Valley Water shall have the right to conduct audits of Palo Alto and Mountain View to ensure that the funds paid by Valley Water under this Agreement are being used in accordance with all restrictions set forth in Sections 5 and 6 of this Agreement. Palo Alto and Mountain View shall cooperate with any such audit and shall provide records requested by Valley Water within a reasonable amount of time.

26. Mutual Benefits of this Agreement

Through execution of this Agreement, Parties agree to commit funding and resources to advance a locally controlled, drought resilient supply that improves water supply reliability and assists in maintaining local groundwater basins, to the benefit of all Parties. Additionally, the Parties seek to develop reliable water supply sources to minimize supplies of water that would otherwise have to be imported via the Sacramento-San Joaquin River Delta and its tributaries, including the Tuolumne River and other mountain streams.

27. Notifications

Palo Alto and Valley Water shall notify all RWQCP Partners of the execution of this Agreement within 30 days of the Effective Date.

28. Choice of Law.

This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. The parties agree that the venue of any action, proceeding or counterclaim shall be in the County of Santa Clara, California.

29. Amendments.

This Agreement may not be modified or amended except by a writing signed by all Parties.

30. Captions.

The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

31. Severability.

If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

32. 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.

33. Attorneys' Fees.

In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorneys' fees as established by the judge presiding over such dispute.

34. Entire Agreement.

This Agreement, together with Appendix 1 attached hereto, constitutes the entire agreement between the Parties and supersedes all prior written or oral understandings.

35. Cooperative 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.

36. Separate Writings, Exhibits, Appendices.

The following appendix constitutes a part of this Agreement and is incorporated into this Agreement by this reference:

Appendix 1.

37. Time of the Essence.

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

38. Waiver.

No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement (1) shall be effective unless it is in writing and signed by the Party making the waiver; (2) shall be deemed to be a waiver of, or consent, to any other breach, failure of a condition, or right or remedy, or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

39. Indemnification.

a. Indemnification by Valley Water. Valley Water shall defend, hold harmless, and indemnify Palo Alto and Mountain View, their officers, agents and employees from, for and against any and all claims, injuries, losses, fines, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising from or related to: (1) Valley Water's use of the RWQCP for tours or onsite research work as provided under this Agreement; (2) Valley Water's use, sale or distribution of the Effluent after taking delivery of the Effluent from Palo Alto; (3) siting or operating the Regional Plant, a water tank or associated facilities, or both, on Palo Alto property; (4) constructing and utilizing Effluent conveyance facilities to and from the RWQCP; and (5) litigation related to a ballot measure to allow use of the Measure E site for the Regional Program or land use approvals by Palo Alto (including actions under CEQA) for the Regional Program. This duty to indemnify shall exclude those claims, injuries, losses, fines, liabilities, damages, costs, and expenses directly caused by Palo Alto's or Mountain View's gross negligence or willful misconduct. Valley Water and Palo Alto may modify Valley Water's duty to indemnify Palo Alto through written amendment of this Agreement relating to development of the Regional Plant.

b. Indemnification by Palo Alto. Palo Alto shall defend, hold harmless, and indemnify Valley Water and its officers, agents and employees from, for and against any and all claims, injuries, losses, fines, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising from or related to: (1) approval, siting, or construction of the Local Plant; (2) operation of the Local Plant; (3) allocation of Remaining funds pursuant to Section 5(f); (4) allocation of the Annual Option Payment pursuant to Section 6. This duty to indemnify shall exclude those claims, injuries, losses,

finances, liabilities, damages, costs, and expenses directly caused by Valley Water's gross negligence or willful misconduct.

c. The provisions of this Section 39 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall take effect on the Effective Date as stated above.

CITY OF MOUNTAIN VIEW,
A California charter city and municipal
Corporation

By: _____
Daniel H. Rich
City Manager

APPROVED AS TO CONTENT:

By: _____
Dawn S. Cameron
Public Works Director

FINANCIAL APPROVAL:

By: _____
Jesse Takahashi
Finance and Administrative
Services Director

APPROVED AS TO FORM:

By: _____
Krishan Chopra
City Attorney

CITY OF PALO ALTO
A California Chartered Municipal Corporation

By: _____
Ed Shikada
City Manager

APPROVED AS TO FORM:

By: _____
Molly Stump
City Attorney

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Norma J. Camacho
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Brian C. Hopper
Sr. Assistant District Counsel

Appendix 1 – Definitions of Effluent Flow and Operational Considerations

CONTEXT

This Appendix to the Agreement to Advance Resilient Water Reuse Programs in Santa Clara County (Agreement) is developed in support of Valley Water’s Effluent Transfer Option as described in the Agreement. All of the descriptions and requirements described in this Appendix are written in the context of that option and do not convey any action outside the context of that option.

BACKGROUND

Parties recognize RWQCP influent and Effluent varies over time. Palo Alto and Mountain View desire enough flow for RWQCP operations, permit compliance, and contractual obligations. Valley Water desires enough Effluent flow to implement a Regional Program that assists in meeting its water supply reliability goals. “Minimum Flow Delivery” is defined in the Agreement. Maximum Delivery is described in this Appendix.

ASSUMPTIONS

- a. Valley Water will receive Effluent as described in the Agreement. Valley Water will be responsible for funding and constructing necessary infrastructure and appurtenances such as pipes, pumps and valves to effectively receive Effluent.
- b. Quantity of Effluent transferred will be measured by a metering device. Valley Water will install and operate a metering device as close as is practical downstream of the point of connection. Palo Alto may install a meter upstream of the point of connection. Meters will be operated and maintained in accordance with manufacturer specifications and industry standards for such meters. In the event of discrepancies between the Valley Water meter and Palo Alto meter, Valley Water and Palo Alto shall meet and confer, and take appropriate action consistent with the Dispute Resolution Procedure language included in Section 23 of the Agreement.
- c. Valley Water may need to fund and construct an equalization tank to meet the minimum daily delivery flow rate and/or provide hourly, daily and perhaps weekly operational flexibility.

EFFLUENT FLOW TO VALLEY WATER

Minimum Flow Delivery defined in the Agreement as “9 MGD” is an annual average of Effluent delivered to Valley Water and is equivalent to 10,081 acre-feet (AF) in a 365-day period. In operating the RWQCP to deliver 10,081 AF to Valley Water in a fiscal year, flow at any given moment may be different from 9 MGD. There are points in a 24-hour cycle in which flow may drop below 9 MGD, and there will likely be other points where it exceeds 9 MGD. As Palo Alto and Mountain View have committed to deliver 10,081 AF of Effluent in a 365-day period, Palo Alto will make a good faith effort to equalize the distribution of Effluent flow and meet the operational needs of Valley Water and Mountain View. Palo Alto, Mountain View, and Valley Water agree to collaborate during the design phase of Valley Water’s Regional Program to meet the flow parameters listed in Table A.

Effluent delivery shall be measured as volume of Effluent delivered through the point of connection over a period of time (e.g., hour, day or year). For any period of time, Effluent delivered may be impacted by special conditions, such as:

- a) The RWQCP is unable to provide Effluent to the point of connection (due to RWQCP maintenance or emergencies);
- b) Regional Program is unable to take Effluent from the point of connection (due to maintenance of Valley Water's facilities);
- c) Valley Water's water reuse facilities (e.g., recharge ponds) are unable to receive water from the Regional Plant (due to operational conditions at the recharge facilities);
- d) Other circumstances as may be agreed upon in writing by Palo Alto and Valley Water.

If Valley Water is unable to take delivery of Effluent for a short period of time (e.g., several days), Palo Alto will make best efforts to supply that Effluent at a later point in time as requested by Valley Water.

Table A: Effluent Flow Parameters

| Averaging Period¹ | Beginning | Ending | Flow Delivery² | Maximum Delivery |
|-------------------------------------|------------------|---------------|--|---|
| Annual | July 1 | June 30 | 10,081-acre-feet | Determined by Valley Water's design parameters and by potential agreements by Palo Alto and Mountain View to supply more than 10,081-acre feet when Effluent is available |
| Daily ³ | 12:00:00 am | 11:59:59 pm | 18-acre feet unless only lower flows are available | Determined by Valley Water's design parameters |

¹ These periods shall be used unless other periods are agreed upon in writing by Valley Water and Palo Alto.

² Values obtained from "Determination of A Guaranteed Feed to An Advanced Water Purification Facility - Revised" TM (Table 5), prepared by Palo Alto, May 3, 2018.

³ May require Valley Water to fund and construct equalization storage upstream from the Regional Plant (based on "Task 6.1 – Palo Alto Advanced Water Purification System Design Flow Assessment", prepared by Woodard & Curran, September 24, 2019).