

**LETTER OF INTENT
FOR COLLABORATING ON THE
EXPANSION OF PURIFIED WATER IN SANTA CLARA COUNTY**

THIS LETTER OF INTENT (“LOI”) is made and entered into as of the date it is fully executed (“Effective Date”) by and between the Santa Clara Valley Water District, an independent special district of the State of California (“Valley Water”), and the City of San José, a municipal corporation (“San José”), and the City of Santa Clara, a municipal corporation (“Santa Clara”). San José, Santa Clara, and Valley Water shall sometimes hereinafter be referred to individually as “Party” and collectively as the “Parties.” Additionally, San José and Santa Clara may sometimes hereinafter be referred to collectively as the “Cities.”

RECITALS

- A. San José is the administering agency for the San Jose/Santa Clara Water Pollution Control Plant that is currently known as the San Jose-Santa Clara Regional Wastewater Facility (“RWF”), jointly owned by San José and Santa Clara.
- B. On March 2, 2010, San José and Valley Water entered into the Ground Lease (“Ground Lease”) and Property Use Agreement for Advanced Water Treatment Facility to provide for Valley Water to construct and operate its advanced water treatment facility and related facilities on a portion of the RWF premises; and Recycled Water Facilities and Programs Integration Agreement to financially support the production and use of recycled water in Santa Clara County consistent with each San José and Valley Waters’ separate and distinct interests: for wastewater treatment and disposal for San José, and water quality and supply for Valley Water, as well as to coordinate and cooperate in meeting each other’s needs.
- C. On October 23, 2012, San José and Valley Water entered into an Agreement for Operation and Maintenance of the Silicon Valley Advanced Water Purification Center (“O&M Agreement”).
- D. The Ground Lease and O&M Agreements authorize Valley Water to operate and maintain the Silicon Valley Advanced Water Purification Center (“SVAWPC”), to provide highly purified water to blend with the RWF’s existing tertiary treated water output to produce higher quality non-potable recycled water to be distributed by the South Bay Water Recycling Program, subject to the requirements of both agreements.
- E. Valley Water desires to develop a process and facilities to purify treated wastewater for potable uses, including (1) using purified water to replenish groundwater basins, an outcome commonly referred to as Indirect Potable Reuse (IPR), and/or (2) delivering the purified water directly to Valley Water’s raw water sources and subsequently to surface water treatment plants for additional treatment and delivery to potable water consumers [aka Direct Potable Reuse (DPR)], collectively (New Project).
- F. On January 27, 2022, Valley Water and San José executed the Master Agreement

Relating to Valley Water's Payment for San José's Support Services to Valley Water's Purified Water Program ("Master Agreement"), which expresses the desire of Valley Water and San José to negotiate in good faith to reach an agreement on a New Project(s) to purify treated wastewater.

- G. On August 1, 2022, Valley Water and San José executed a First Amendment to the Master Agreement which extended the term of the Master Agreement and revised Valley Water's funding obligations therein.
- H. Valley Water, San José, and Santa Clara now desire to execute this LOI to reflect the Parties' intent to negotiate in good faith, in accordance with the Master Agreement, a collaborative agreement ("Collaborative Agreement") for the development of joint water reuse project(s) that expands upon the San José, Santa Clara, and Valley Water's existing collaborative efforts related to the SVAWPC for the purpose of improving water supply reliability in the County of Santa Clara ("County") in the face of the impacts of climate change.

1. **Recitals.** The above recitals are incorporated herein and made a part of this LOI.
2. **Definitions.** The following terms, when utilized in this LOI shall have the following definitions:
 - a. **Recycled water:** or sometimes called "purple pipe" due the distinguishing color of infrastructure reserved for its conveyance and distribution, generally refers to treated domestic wastewater used for non-potable uses such as irrigation and industrial uses.
 - b. **Purified water:** is recycled water that has gone through additional advanced treatment such as microfiltration, reverse osmosis ("RO") and disinfection to meet and exceed state and federal drinking water standards.
3. **Good Faith Negotiations of a Collaborative Agreement to Maximize the Use of Treated Wastewater to Best Serve the Water Supply Needs of the Community.** The Parties hereby agree to engage in good faith negotiations to develop a more sustainable, water-resilient future for the Cities and Valley Water via the Collaborative Agreement, which shall result in the significant increase of available treated wastewater from the San José-Santa Clara Regional Wastewater Facility ("RWF") that can be recycled and used for potable and non-potable purposes in a manner that serves the best interest in meeting the water supply needs of each Party's jurisdiction with minimal impact to the environment.
4. **Picture of Success.** As the population of the County, which includes the jurisdictions of the Parties, continues to expand and as climate change makes an already variable California climate more vulnerable to long term drought, the future of San José, Santa Clara, and Valley Water depends on the significant and rapid expansion of recycling treated wastewater from the RWF for outdoor irrigation of functional landscape and the conversion of wastewater to purified water that can serve both potable and non-potable purposes. The RWF's South Bay Water Recycling Master Plan, the RWF Master Plan, and Valley Water's Countywide Water Reuse Master Plan form the basis of the portfolio of potential recycled water projects and the Collaborative Agreement. The Parties will employ their best efforts to enter into a Collaborative Agreement that positions the Cities

and Valley Water on a path to meeting or exceeding the essential, goals of each Party's respective plan(s).

5. **Mutual Goals.** The Parties share the following mutual goals, which the Parties seek to memorialize via the mutual execution of the Collaborative Agreement:
 - a. Improvement of water supply reliability in the County;
 - b. Meeting each Party's respective shared water supply needs;
 - c. Increase of the amount of treated wastewater available from the RWF for conversion into recycled water for potable and non-potable uses;
 - d. Support of water reuse projects with a capital expansion area adjacent to the location of the SVAWPC;
 - e. Support of the production and use of recycled water in the County consistent with the interests of each Party's respective rate payers;
 - f. Ensure that each Party plans and develops recycled water projects that are ready to take advantage of current and future state and federal funding opportunities;
 - g. Develop a prudent and fair way to manage any resulting RO concentrate such that it does not create undue financial burdens or regulatory liability on the Parties;
 - h. Develop water reuse projects in a way that protects groundwater quality;
 - i. Maximize demand management and water conservation, including for non-potable uses; and
 - j. Consider feedback from the Treatment Plant Advisory Committee that includes San José, Santa Clara, the City of Milpitas, the Cupertino Sanitary District, the West Valley Sanitation District, the Burbank Sanitary District, and the County Sanitation District 2-3.

6. **Collaborative Agreement.** The Parties agree to engage in good faith negotiations to develop the Collaborative Agreement containing a general scope of projects and/or capital improvements that would enable the realization of the picture of success described in Section 4 above, that encompasses the mutual goals set forth in Section 5 above, and that otherwise includes other considerations set forth herein this LOI. The Collaborative Agreement shall: (i) describe an approach to share costs for joint recycled water projects and capital improvements amongst the Parties; (ii) assign responsibility amongst the Parties to operate and maintain facilities; (iii) recommend to Party's respective governing bodies how the Parties can improve their current governance structure related to joint recycled water efforts; and (iv) set forth a fair process to resolve disputes and share liability. The proposed scope of the Collaborative Agreement that the Parties are currently contemplating is further elaborated upon below:
 - a. Define the project(s) to be pursued by the Parties:
 - i. Consider feasible recycled and purified water projects (e.g. targeted non-potable, indirect and direct potable), including any partnerships with third-parties;
 - ii. Determine each Party's water, treatment, real property, and infrastructure needs;
 - iii. Consider capacity and supply amount of current water sources;
 - iv. Describe capital and operational expansions of SVAWPC; and
 - v. Develop a schedule of implementation.

- b. Develop terms in the Collaborative Agreement to address:
 - i. Revisions to the Recycled Water Facilities and Programs Integration Agreement, effective March 2, 2010, Operation and Maintenance of the Silicon Valley Advanced Water Purification Center, and the Ground Lease and Property Use Agreement;
 - ii. RO concentrate responsibilities and management;
 - iii. Necessary approvals by applicable regulatory agencies;
 - iv. The amounts of recycled and purified water to be developed for potable and non-potable uses;
 - v. Compensation terms, cost sharing, liability allocation, collaboration on grant acquisitions, and other financing mechanisms;
 - vi. Conceptual design of any project(s) pursued;
 - vii. Real Property needs for the any project(s) pursued;
 - viii. Design and construction delivery method;
 - ix. Public outreach and educational programs;
 - x. Collaboration on potable reuse regulatory advocacy;
 - xi. CEQA/NEPA requirements; and
 - xii. Other contractual, regulatory, and policy obligations of each Party, which may include but are not limited to, compliance with the requirements and limitations of San José's National Pollutant Discharge Elimination System Permit, Proposition 218, Proposition 26, and contractual obligations under the Master Agreements between San José, Santa Clara, and Tributary Agencies including the City of Milpitas, the Cupertino Sanitary District, the West Valley Sanitation District, the Burbank Sanitary District, and the County Sanitation District 2-3.

7. **Process.** By taking a win-win mutual gains approach, the Parties seek to creatively develop solutions that meet the Parties' respective interests and build a foundation of a trusted partnership necessary for the complicated long-term work of construction and operations of facilities that allow the Parties to realize the Parties' mutual goals set forth in Section 5 above. The Parties shall engage in honest and open dialogue with commitment to ensure each Party's respective negotiations team members explore the development of the Collaborative Agreement.

8. **Schedule and Term.** The term of the negotiations of the Collaborative Agreement shall extend to the earlier of the mutual execution of the Collaborative Agreement by the Parties or July 31, 2024 ("Term"). The Parties agree to achieve, in good faith, the following milestones no later than the dates indicated below:

- a. On or before March 30, 2023, the Parties agree to develop a conceptual project definition to be mutually agreed upon by the Parties; and
- b. On or before July 31, 2023, the Parties agree to mutually execute collaborative agreements.

9. **Non-Binding Terms.** Except as provided for in Section 10 of this LOI, all other terms and conditions of this LOI are non-binding.

10. **Binding Terms.** Notwithstanding any other provision herein this LOI, the Parties agree the following terms are binding:
- a. **Good Faith Negotiations.** In accordance with the terms of the Master Agreement, San José and Valley Water are obligated to engage in good faith negotiations of the Collaborative Agreement. As Santa Clara is not a party to the Master Agreement, it is under no such obligation. San José or Valley Water, so long as either San José or Valley Water, as the terminating Party, has engaged in good faith negotiations, may terminate the negotiations of the Collaborative Agreement prior to the expiration of the Term. Santa Clara may terminate its participation in the negotiations of the Collaborative Agreement at any time for any reason.
 - b. **Compensation.** San José and Valley Water acknowledge the existence of the Master Agreement entered into by San José and Valley Water, on January 27, 2022, which sets forth the terms and conditions for Valley Water's payment obligations to the City for the City's support services related, directly or indirectly, to Valley Water's Purified Water Program and to the negotiation of the Collaborative Agreement, including the City's support related to LOI.
11. **Governing Law.** The Parties agree that California law governs this LOI. In the performance of this LOI, each Party will comply with all applicable laws, ordinances, codes and regulations of the federal, state, and applicable local government.
12. **Venue.** In the event that suit is brought by any Party to this LOI, the Parties agree that the venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
13. **Counterparts; Electronic Signature.** This LOI may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed to be an original, and all of which, taken together, will be deemed to be one and the same instrument. Unless otherwise prohibited by law or policy of the Cities or Valley Water, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the Parties.
14. **Severability.** If a court of competent jurisdiction holds any binding provision of this LOI to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining binding provisions, or portions of them, will not be affected, unless an essential purpose of this LOI would be defeated by the loss of the illegal, unenforceable, or invalid provision.
15. **Headings.** The section and exhibit headings are for convenience only and are not to be used in its construction.

WITNESS THE EXECUTION HEREOF on the day and year first written below.

CITY OF SAN JOSE

Dated: _____, 2022

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

CITY OF SANTA CLARA

Dated: _____, 2022

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

SANTA CLARA VALLEY WATER DISTRICT

Dated: _____, 2022

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____