

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

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

**RECITALS**

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

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

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

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**A. Automatic Early Termination.**

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

B. Intentionally deleted.

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

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

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

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

If to City, the same shall be addressed to:

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

If to District, the same shall be addressed to:

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

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

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

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

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

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

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

**“CITY”**

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal Corporation

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LEANNE BOLANO  
Deputy City Attorney

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TONI J. TABER, MMC  
City Clerk

**“DISTRICT”**

APPROVED AS TO FORM

SANTA CLARA VALLEY WATER DISTRICT, a public entity

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BRIAN C. HOPPER  
Sr. Assistant District Counsel

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MELANIE RICHARDSON, P.E.  
Chief Executive Officer

## FIRST AMENDED EXHIBIT A

### DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“District Net Operating Cost for AWTF”** - shall mean and include all costs and expenses incurred by District for the administration, operation, maintenance and repair of the AWTF, less any revenue that may be received by District from wholesale recycled water sales of SBWR or AWTF water, from third parties for operation of the AWTF, but shall not include any revenue received by District from resale of recycled water sold by City to District pursuant to the Silver Creek Pipeline Agreement. The District may include the Reserve Fund as an operating cost until June 30, 2030. The District's Net Operating Cost for AWTF shall not exceed the amount stated in the Draft AWTF Budget provided by District to the Recycled Water Policy Advisory Committee, except for costs attributable to unanticipated increases supplies, material, equipment and labor. The methodology used to develop the following estimate of District's Net Operating Cost for AWTF for projected, which is explained in more detail in the Black & Veatch Draft Project Report No. 146071, dated July 2007, shall be used to calculate future District Net Operating Cost for AWTF<sup>2</sup>:

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

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

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



Description	Summer Months	Winter Months	Annual Cost
Miscellaneous Cost			<sup>3</sup>
Tanks			\$59,000
Parts Replacement			\$25,000
<b>Total Annual O&amp;M Cost (Year 2010)</b>			<b>\$3,554,000</b>

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

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

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

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

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

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

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

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

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

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

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

# FIRST AMENDED EXHIBIT B



## **FIRST AMENDED EXHIBIT C**

### **FINANCIAL SUPPORT PAYMENT ILLUSTRATIONS**

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

#### **Total Net Operating Loss Scenarios**

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

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

#### **Total Net Operating Revenue Scenario**

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