

**AGREEMENT BY AND BETWEEN THE
SANTA CLARA VALLEY WATER DISTRICT
AND
THE CITY OF SANTA CLARA RELATING TO VALLEY WATER'S PAYMENT FOR CITY'S
SUPPORT SERVICES TO VALLEY WATER'S PURIFIED WATER PROJECT**

This Master Agreement (Agreement) is made and entered into as of July 1, 2024 (Effective Date), by and between the City of Santa Clara (City or Santa Clara), a chartered California municipal corporation, and the Santa Clara Valley Water District (Valley Water), an independent special district of the State of California. The City and Valley Water may be referred to individually as a Party, or collectively as Parties, to this Agreement.

RECITALS

A. The City is the co-owner of the San Jose-Santa Clara Regional Wastewater Facility (RWF).

B. On January 31, 2022, the Parties executed a Letter of Intent for Collaborating on the Expansion of Recycled and Purified Water in Santa Clara County (LOI). The LOI recognizes that future water supply will depend on the significant and rapid expansion of recycling treated wastewater from the RWF for non-potable uses including outdoor irrigation and industrial cooling, and the use of advanced purified recycled water for drinking water purposes.

C. On November 17, 2023, the Valley Water Board and Santa Clara City Council confirmed: (1) support for aggressively pursuing a joint water reuse project to meet local water supply needs, including both a demonstration and full-scale potable reuse facilities that is the largest size practicable within funding, environmental, and technical constraints; (2) support for the development of the feasibility study, demonstration facility and institutional arrangements, including lease and wastewater availability agreements, within two years; and (3) support for a coordinated public outreach program to ensure the success of a direct potable reuse project.

D. Valley Water desires to develop a process and facilities to purify treated wastewater for potable reuse, that may include (1) using purified water to replenish groundwater basins, an outcome commonly referred to as Indirect Potable Reuse, and/or (2) delivering the purified water with additional treatment directly to Valley Water's raw water or treated water sources and subsequent delivery to potable water consumers, an outcome commonly referred to as Direct Potable Reuse.

E. The Parties desire to negotiate in good faith to reach agreement on a Purified Water Project, which: (i) utilizes effluent from the RWF; (ii) secures rights on RWF land to construct, operate and maintain an expanded Silicon Valley Advanced Water Purification Center (SVAWPC) or a separate advanced water purification center; and (iii) secures approval to discharge of reverse osmosis concentrate associated with the expanded SVAWPC facilities or separate advanced water purification center into the RWF outfall.

F. The City anticipates it will incur certain staffing and consultant expenses relating to these support services. Valley Water agrees to remit adequate funds to fully reimburse the City for all costs incurred to provide the support services, as described in this Agreement.

G. The City also assisted Valley Water with the pipeline alignment for the Palo Alto

Indirect Potable Reuse project and is seeking reimbursement for the staff time spent.

Now, therefore, in consideration of the mutual promises set forth below, the Parties agree as follows:

AGREEMENT

1. Purpose

The purpose of this Agreement is to establish the basis and procedure for reimbursement by Valley Water for the costs and expenses incurred by City in the performance of support services in connection with the Purified Water Project, through the term of this Agreement.

2. Scope of Agreement

- A.** The Parties have agreed that the City will provide support services generally described in the Scope of Services, attached hereto as Exhibit A and incorporated into the Agreement by this reference (Scope of Services); the Parties furthermore agree that City shall provide such services to the extent necessary in its professional judgment and discretion to complete the tasks described in the Scope of Services, and to satisfy any regulatory, technical or similarly applicable requirements.
- B.** Nothing in this Agreement commits either Party to the implementation of any project, including without limitation, the RWF provision of wastewater, land or permission to discharge into the RWF outfall.
- C.** Nothing in this Agreement modifies the terms of any existing Agreement between the City and Valley Water.

3. Agreement Term; Termination

- A.** Term. The term of this Agreement commences on its Effective Date and expires two years after the Effective Date. The term of this Agreement shall be automatically extended for an additional period of one (1) year, not to exceed four (4) additional years, unless either party provides written notice of termination at least 180 days prior to the immediately preceding one-year renewal period.
- B.** Termination. Any Party may terminate this Agreement by providing thirty (30) days written notice to the other Party. The City shall send Valley Water a final invoice within sixty (60) days of the effective date of termination of this Agreement.

4. Reimbursement

- A.** The City shall provide Valley Water, on a quarterly basis, a written invoice for the work performed during the immediately previous three months. The invoice shall set forth the relevant period, the number of hours worked and the applicable hourly rates, a description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses.
- B.** Within 45 days of receipt of an invoice, Valley Water shall remit payment to City, subject to review and approval of Valley Water. Such approval shall not be unreasonably withheld.

5. Responsibilities of the Parties

A. Valley Water agrees to:

1. Ensure sufficient staff resources and consultant services are devoted to development and pursuit of the Scope of Services.
2. Provide all necessary studies, reports, plans, specifications, maps, and other documents to City in a timely manner, and allow the City at least 2 weeks for detailed review and comments, unless mutually agreed otherwise by the Parties.
3. Schedule meetings with 2 weeks advance notice and cognizant of City availabilities unless mutually agreed to otherwise by the Parties.
4. In collaboration with the City, review and respond to subsequent requests for additional information to complete the Scope of Services.
5. Work collaboratively with City staff and consultants retained by City to ensure timely discussion and review of the Purified Water Project tasks.

B. City agrees to:

1. Ensure sufficient staff resources and consultant services are devoted to City's responsibilities with respect to the Scope of Services, subject to the appropriation of funds by City's Council.
2. Review and provide comments on the Scope of Services and any amendments thereto within a timeframe mutually agreed to by the Parties.
3. Work collaboratively with Valley Water and its consultant, contractors, and agents to ensure timely discussion and review of Purified Water Project tasks associated with planning, design, and construction.
4. Once per quarter, submit invoices documenting costs incurred by the City and any consultants retained by City for review and approval by Valley Water.

6. Records Retention and Audit

A. The City agrees to make available for examination by Valley Water, subject to limitations established by state law, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements invoiced to Valley Water or amounts deducted from the Funding Account. City shall also furnish to Valley Water, its authorized agents, officers or employees such other evidence or information as Valley Water may request with regard to any such expenditure or disbursement charged by City.

B. The City shall maintain full and adequate records to document the actual costs it incurs which are subject to reimbursement of the City's costs pursuant to this Agreement. City shall provide such assistance as may be reasonably requested in the course of such inspection.

7. Notices

Any and all notices required to be given to a Party hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the Parties at the following address or such other address, or via e-mail with a written confirmation of receipt at the address(es) below, as is provided by either Party in writing:

City:

City of Santa Clara
Water and Sewer Utilities
Attention: Gary Welling, Director
1500 Warburton Avenue, Santa Clara, CA 95050
Phone: 408-615-2000
Email address: gwelling@santaclaraca.gov

Valley Water:

Santa Clara Valley Water District
Water Utility Enterprise
Attention: Kirsten Struve, Assistant Officer
5750 Almaden Expressway San Jose, CA 95118
Phone: (408) 630-3138
Email address: kstruve@valleywater.org

8. Severability

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

9. Mutual Indemnification

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, Valley Water and City agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Party, including its officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this Agreement. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this Agreement.

10. Governing Law and Compliance with Laws

The Parties agree that California law governs this Agreement. In the performance of this Agreement each Party will comply with all applicable laws, ordinances, codes and regulations of the

federal, state, and applicable local government.

11. Disputes

The Parties agree that they will work together in good faith to achieve the intent of this Agreement. In the event that a dispute arises as to the proper interpretation of the respective obligations and responsibilities of the Parties as described herein, or as to any other aspect of this Agreement, Valley Water and the City agree that they each will assign the appropriate individuals to meet and make good faith efforts to negotiate in order to arrive at a resolution of the dispute. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, each Party shall bear the entirety of its own costs and expenses including but not limited to attorneys' fees.

12. Venue

In the event that suit is brought by any Party to this Agreement, the Parties agree that 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. Assignability

Parties will not assign this Agreement or any portion thereof to a third party without the prior written consent of the other Party.

14. Ownership of Materials

All reports, documents, technical data, findings, or other materials (collectively, the "Work Product") developed by City as part of this Agreement shall be the property of the City. Valley Water shall have right to the Work Product for Valley Water business, including, without limitation, further development of its water supply infrastructure.

This section shall not apply to any Work Product or documents or communications covered by attorney-client privilege.

15. Entire Agreement

This Agreement constitutes the entire agreement between the City and Valley Water with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect except by an instrument in writing signed by authorized representatives of the Parties.

16. Counterparts and Electronic Signatures

This Agreement 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 a Party, 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 City.

17. Nonwaiver

A Party's waiver of any term, condition, or covenant, or breach of any term, condition or covenant will not be construed as a waiver of any other term, condition or covenant.

18. Third Parties

This Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.

19. Debt Limitation

The City and Valley Water are both subject to laws or policies which limit their ability to incur debt in future years. Nothing in this Agreement shall constitute an obligation of future legislative bodies of the City or Valley Water to appropriate funds for purposes of this Agreement.

20. No Partnership or Agency

Nothing in this Agreement is intended to constitute a partnership between the Parties, or authorize either party to act as agent for the other, or authorize a party to act in the name or on behalf of or otherwise to bind the other in any way.

21. Exhibits

The following listed Exhibits are incorporated herein by this reference as though set forth in full:

- Exhibit A - Scope of Services
- Exhibit B - Schedule of Performance
- Exhibit C - Compensation

IN WITNESS WHEREOF, the City and Valley Water have executed this Agreement on the Effective Date as defined in the introductory paragraph of this Agreement.

CITY OF SANTA CLARA

Approved as to Form:

Dated: _____

GLEN R. GOOGINS

City Attorney
City of Santa Clara

CITY OF SANTA CLARA

Dated: _____

JŌVAN D. GROGAN

City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

**APPROVED AS TO FORM FOR
SANTA CLARA VALLEY WATER
DISTRICT:**

By _____
BRIAN C. HOPPER
Sr. Assistant District Counsel

Date _____

**SANTA CLARA VALLEY WATER
DISTRICT**

By _____
RICK L. CALLENDER, ESQ
Chief Executive Officer

Date _____

EXHIBIT A

SCOPE OF SERVICES

A. Background: The Purified Water Project

The Purified Water Project (Project) is part of Valley Water's strategy to respond to the multi-year drought and is consistent with Board direction to expand the County's recycled water supply. Valley Water's 2040 Water Supply Master Plan (WSMP) recommends developing at least 24,000 AFY of potable water reuse (above the current target of 33,000 AFY of non-potable reuse). Valley Water has developed a Countywide Water Reuse Master Plan (CoRe Plan) that has evaluated potable reuse expansion throughout Santa Clara County, including identifying options for achieving the WSMP's water reuse target.

The Project may include an expansion of the SVAWPC or a separate advanced water purification center to purify wastewater for potable reuse. The Project is anticipated to be designed in two phases: Phase I will include demonstration facilities and a visitors' center, and Phase II will include a full-scale advanced water purification facilities and conveyance infrastructure for a potable reuse. Valley Water and the Cities of San Jose and Santa Clara, as co-owners of the RWF, must resolve several key issues before possible expansion of the SVAWPC could proceed:

1. An expanded land lease of RWF lands;
2. Quantity, quality, and diversion point of source water (tertiary treated wastewater);
3. Private Activity impacts or limitations on indirect and direct potable reuse;
4. No negative impacts to the RWF ratepayers;
5. Management and disposal of reverse osmosis (RO) concentrate; and
6. Revised legal agreements (integration agreement, O&M, power, signage) associated with purified water production on RWF lands.

B. General Provisions

The Parties acknowledge the complexity of the project and the need for ongoing coordination of efforts; the Parties further agree to work in good faith to resolve the issues enumerated above and complete the tasks described below.

Valley Water agrees to provide adequate funding to reimburse the City for approved costs incurred in connection with the implementation of the project.

City agrees to use Valley Water funds only for direct project costs.

C. Description of Tasks

Task 1 – Attendance of Meetings

City will attend meetings with Valley Water, local, federal and state regulatory staff, to identify, discuss, and resolve issues, to establish priorities, and to review progress as needed. This includes development of a schedule for the execution of the needed agreements for Valley Water's planning purposes. These meetings will be used to further refine the principal terms to be included in various agreements that will establish

commitments for the above-listed key issues and legal aspects of a water purification facility.

Task 2 – Demonstration Facility and Visitors Center

City will review legal memoranda developed by Valley Water and/or its consultants in support of the development and implementation of a Demonstration Facility / Visitors Center. These activities will provide the legal foundation for agreements supporting the construction of these facilities, including but not limited to the following:

1. Facilities and land lease on RWF lands,
2. Specifications for diversion point of source water (tertiary treated wastewater),
3. Management and disposal of reverse osmosis (RO) concentrate;
4. Return point to RWF for RO Concentrate and waste streams;
5. Revised legal agreements (i.e., O&M, power, signage) associated with demonstration facilities / visitor's center on RWF lands; and
6. Support related to City Council and Valley Water Board approval of these Agreements.

Task 3 – Regulatory Coordination and Resolution of RO Concentrate Management and Disposal

The Cities of San Jose and Santa Clara, Valley Water, and applicable consultants will develop strategies for regulatory compliance with pertinent regulatory agencies, including the Regional Water Quality Control Board (RWQCB) on various permitting items including application of existing permit conditions and agency issues regarding RO concentrate management, National Pollutant Discharge Elimination System (NPDES) permitting, and potable reuse facility permitting.

City's work under this task may include, but is not limited to:

- a) fulfillment of data requests and site access coordination,
- b) review of studies prepared by Valley Water or its consultants pertaining to RO concentrate management including, but not limited to, assessing the feasibility of using the existing RWF outfall for RO concentrate discharge within the constraints of continued compliance with the City's NPDES limitations, and
- c) participation in the evaluation and discussions of regulatory options for addressing RO concentrate management.

This task may require City, at City's sole discretion, to provide peer review, responding to regulatory agencies, consultant support services, and attendance at meetings, as appropriate, to discuss study outcomes.

Task 4 - Land Lease for Purification Facilities Adjacent to the SVAWPC

City and Valley Water will develop a revised Ground Lease Agreement and/or a new executable lease agreement option for buildable land to accommodate the Project and associated facilities. The lease agreement will include an option for additional facilities for technical demonstration, educational outreach and training activities associated with purified water. In addition to development of the lease, City work under this task may include, but is not limited to: support and coordination regarding remediation of hazardous materials, regulatory permitting support, coordination of site entry, permission to sample, and support of materials registration.

Task 5 – Development of Agreements

City will review legal memoranda developed by Valley Water and/or its consultants in support of Project development and implementation. These activities will provide the legal foundation for agreements supporting purified water facility construction and production, including but not limited to the following:

1. Specifications for diversion point of source water (tertiary treated wastewater),
2. Management and disposal of reverse osmosis (RO) concentrate;
3. Return point to RWF for RO Concentrate and waste streams;
4. Revised legal agreements (i.e., O&M, power, signage) associated with purified water production on RWF lands;
5. Development and review of Project Funding Agreements; and
6. Support related to City Council and Valley Water Board approval of these Agreements.

Task 6 - Quantity and Quality of Tertiary Treated Wastewater for Expanding Advanced Water Purification Capabilities

City and Valley Water have met and discussed the quality of source water for an expanded facility. City and Valley Water will meet to identify and discuss the quantity of source water for an expanded facility, and the period source water will be made available to Valley Water.

Task 7 - Regulatory Coordination

City will work with Valley Water and their consultants, as appropriate, to develop strategies for and attend meetings with pertinent regulatory agencies (RWQCB) to discuss existing permit conditions and agency issues regarding potential impacts of RO concentrate management. This task may require City staff to respond to regulatory agencies, provide supporting information, and participate in the development and review of follow-up studies.

Task 8 – Technical Support and Coordination

City shall provide technical support and coordinate with Valley Water to support the Project development and implementation. City, with necessary consultant services, will review engineering, environmental, regulatory, and technical memoranda and reports developed by Valley Water and/or its consultants in support of Purified Water Project development. This task includes general project coordination during the design, construction, and post-construction phases and work activities and coordination associated with, but not limited to:

1. Tie-in Connections at RWF for RO concentrate, waste streams, and tertiary effluent pipelines;
2. Site boundaries and surveys;
3. RWF water quality sampling, as needed;
4. Existing utility identification and connections;
5. Current and historical water quality information;
6. Effluent water samples for additional testing; and
7. As-Built drawings of the RWF.

Task 9 – Evaluate Private Activity Limitations

This task may require contracting with third-party bond counsel, attendance of meetings for strategy development with Valley Water staff, Valley Water preparation of a project description, scope, functionality, and terms of potable reuse, as necessary, for bond counsel to determine impacts and viability, preparation of documents by City and Valley Water staff, or consultants, as applicable.

Task 10 – Pipeline Alignment

City will review preliminary pipeline alignments and provide information, as requested by Valley Water staff to assist in development of the pipeline design. Requested information may include but not be limited to as-built drawings, street moratorium information, project drawings, and existing utility information.

City will promptly review applications and promptly issue encroachment permits for exploratory boring investigations along the preferred alignment during the planning phase.

EXHIBIT B

SCHEDULE OF PERFORMANCE

The Parties will mutually agree to the schedule to perform tasks under this Agreement. Parties agree to perform tasks in a reasonable amount of time.

During the first year of this Agreement, the parties shall complete the following tasks:

Demonstration and Visitors Center

1. Approval of Facilities and Land Lease Agreement to support the Demonstration and Visitors Center
2. Specifications for diversion point for source water to support the Demonstration and Visitors Center
3. Specifications for return point for ROC to support the Demonstration and Visitors Center
4. Amendment of current or new agreements to support Demonstration and Visitors Center

Within thirty days prior to the end of each year in the term of this Agreement, the Parties shall meet and confer to develop and finalize a schedule for Tasks to be completed and/or milestones met in the upcoming year. This updated schedule shall be approved in a writing signed by the designated representative of each Party. Such executed schedule shall amend this Exhibit-B and be binding upon the Parties.

EXHIBIT C
COMPENSATION

Not to Exceed Amount: \$350,000. Valley Water funding for this Agreement will not exceed \$350,000 unless increased through a written amendment to this Agreement signed by both parties.

Hourly Rates: Valley Water will compensate City at the hourly rates in Exhibit C.1 of this Agreement. Notwithstanding anything to the contrary, these hourly rates are valid at the time of execution but may be subject to increase following each new fiscal year.

Reimbursable Expenses: Valley Water will reimburse for expenses subject to the following:

The following expenses are reimbursable to the extent City documents to Valley Water's satisfaction that they were incurred in performing the work required by Exhibit A:

- the cost of City's Consultant services supporting the Purified Water Program.
- the cost of mailing, shipping and/or delivery of documents or products to Valley Water.
- the cost of photographing, reproducing and/or copying.
- telephone and fax charges.
- the rental of any specialized equipment to the extent Valley Water has preapproved, in writing, the cost of such rental.

Quarterly Report (Enterprise Fund): Every three months, the City shall provide Valley Water a report for the work performed during the immediately previous three months as specified under Section 4(A) of the Agreement.

Quarterly Invoice (General Fund): Every three months, the City shall provide Valley Water with an invoice for the work performed during the immediately previous three months as specified under Section 4(B) of the Agreement.

EXHIBIT C.1

SCHEDULE OF CHARGES

The following City staff positions are anticipated to be necessary to provide support services under this Agreement. Additional or alternative positions may be necessary throughout the Agreement. The rates will be subject to change based on City's salary schedules approved by City Council. The rates may be subject to change following each new fiscal year beginning July 1 and ending June 30.

[illegible]