

**FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND THE SANTA CLARA VALLEY WATER
DISTRICT FOR ADVANCED WATER TREATMENT FACILITY**

THIS FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE

AGREEMENT (“Amendment”) is entered into this ____ day of ____, 2025, by the CITY OF SAN JOSE (“CITY”), a charter city and municipal corporation, as Administering Agency for the San José/Santa Clara Water Pollution Control Plant (“City” or “Landlord”) and the SANTA CLARA VALLEY WATER DISTRICT, a California special district (“District”). The District and Landlord are each a “Party” and collectively, the “Parties”.

RECITALS

WHEREAS, the Parties entered into that certain Ground Lease and Property Use Agreement (the “Agreement”), dated March 2, 2010, but effective July 1, 2010, for District to lease the Premises and the Ancillary Property to construct and operate the Advanced Water Treatment Facility, or “AWTF” (formally named Silicon Valley Advanced Water Purification Center “SVAWPC”);

WHEREAS, the 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 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;

WHEREAS, District desires to construct and operate a direct potable reuse demonstration facility and learning center (the “DPR Demonstration Facility”) on a portion of the Property as depicted on the attached Revised Exhibit A;

WHEREAS, the proposed DPR Demonstration Facility will treat up to half (0.5) mgd from a portion of the twelve (12) mgd RWF secondary effluent diverted to the SVAWPC;

WHEREAS, Microsoft Corporation (“Microsoft”) is proposing to build a data center at 1657 Alviso-Milpitas Road which would involve expanding McCarthy Lane (North Access Road) into a portion of the Property, and Microsoft has agreed to relocate District’s Visitor’s Center among other actions as consideration for the Valley Water agreeing to the relocation to accommodate the proposed expansion of North Access Road (“Relocation Project”);

WHEREAS, the Parties and Microsoft intend to memorialize its respective actions and obligations in a three-party Relocation Agreement as a condition precedent to Microsoft’s expansion of North Access Road;

WHEREAS, on [insert date], District [insert environmental clearance];

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and District hereby agree as follows:

SECTION 1. Defined Terms. Unless otherwise defined in this Amendment, capitalized terms have the meaning set forth in the Agreement.

SECTION 2. SECTION 1, “DEFINITIONS” is amended to read as follows:

Each reference in the body of this Agreement to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below.

“Agreement” means Ground Lease and Property Use Agreement between the City of San José and the Santa Clara Valley Water District for Advanced Water Treatment Facility, and any amendments.

“Ancillary Property” means the property described in **Section 2.2.**

“Advanced Recycled Water Treatment Facility” or **“AWTF”** means the facility constructed on the Premises in 2014 as described in the Plans & Specifications (“AWTF”) also known as the **Silicon Valley Advanced Water Purification Center (“SVAWPC”).**

“City” means the City of San José, a charter city, as Administering Agency for the San José/Santa Clara Water Pollution Control Plant.

“Days” unless otherwise specified, means calendar days.

“Director” means the person designated Director of Environmental Services by City, or such other person, division, department, bureau, or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of General Services. The term also includes any person expressly designated by the Director of Public Works to exercise rights and/or obligations empowered in the “Director” under this Agreement.

“District” means the Santa Clara Valley Water District, a California special district.

“DPR Demonstration Facility” means a direct potable reuse demonstration facility and learning center that the District will construct and operate on the Premises.

“Effective Date” shall mean July 1, 2010 for Premises and Ancillary Property described in Exhibit B, and the effective date of the First Amendment to Ground Lease and Property Use Agreement for the Premises and Ancillary Property described in Revised Exhibit B.

“Environmental Laws” shall mean and include the California Environmental Quality Act, to the extent applicable, the National Environmental Policy Act and all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

“Hazardous Materials” means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste. Secondary treated water provided by the Plant to the AWTF or DPR Demonstration Facility for treatment shall not be considered a Hazardous Material.

“Improvements” means the AWTF and Related Facilities and all Subsequent Alterations and Improvements.

“Integration Agreement” means the “Recycled Water Facilities and Programs Integration Agreement Between the City of San José and the Santa Clara Valley Water,” dated July 1, 2010, as amended by the Parties.

“Laws” means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, City rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities, including without limitation, city, state, municipal, county, federal agencies or the federal government, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

“mgd” means million gallons per day.

“Municipal Code” means the San José Municipal Code, as amended from time to time.

“Operations & Maintenance Agreement” or “O&M Agreement” means the Agreement Between the City of San Jose and the Santa Clara Valley Water District for Operation and Maintenance of the Silicon Valley Advanced Water Purification Center executed October 23, 2012, as amended by the Parties.

“Person” means an individual, a corporation, a partnership, a joint venture or any other form of business association.

“Plans & Specifications” means collectively, (a) the 60% Final Plans and Specification for Construction of AWTF, prepared by Black and Veatch, District Project No. 91184008, and approved by City and District prior to execution of the Agreement; and (b) the final plans and specifications for the DPR Demonstration Facility approved by the City and District pursuant to Section 8 of the Agreement.

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

“Premises” means the property described in Revised Exhibit B.

“Recycled Water Policy Advisory Committee” means the policy advisory committee formed by the Parties pursuant to the Integration Agreement.

“Related Facilities” means the facilities needed to integrate the AWTF into the operation of the Plant and to provide utility services for the AWTF, as depicted in **Exhibit A**.

“South Bay Water Recycling” or “SBWR” means the assets owned and operated by City, and the program conducted by the City, as administering agency for the Plant for the wholesale distribution of recycled water.

“Subsequent Alterations and Improvements” means any improvement, alteration, addition or construction of improvements on the Premises or Ancillary Property including the DPR Demonstration Facility, other than with the AWTF and Related Facilities as shown in the Plans & Specifications, and furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises or Property.

“Technical Working Group” means the staff level working group formed by the Parties pursuant to the Integration Agreement.

SECTION 3. SECTION 2, “LEASE OF PREMISES AND RIGHT TO USE ANCILLARY PROPERTY” is amended to read as follows:

2.1. Premises.

Landlord hereby leases, transfers and demises to District, and District hereby leases and takes from Landlord, the Premises for the terms and upon the agreements, covenants and conditions set forth in this Agreement, the Premises depicted on **Revised Exhibit B** attached hereto and incorporated by reference herein.

2.2. Ancillary Property.

Landlord hereby grants to District, the right to use the Ancillary Property for the Related Facilities depicted on **Exhibit A and Revised Exhibit B**, for the terms and upon the agreements, covenants, and conditions set forth in this Agreement.

2.3 Ingress and Egress.

2.3.1 District shall have a terminable nonexclusive license to use the access roadway to the Premises shown as North Access Road, as shown on **Revised Exhibit C**, but title to such roadway and the underlying property shall at all times remain with City and shall not be deemed to be part of the Premises under this Agreement. City reserves the right to terminate the license to use the access road upon the offer to provide land for substitute access at no cost to District. Upon the offer of such substitute access, District shall be responsible for all costs and expenses of developing such substitute access, and shall promptly submit Plans & Specification therefore to City, pursuant to the provisions of **Section 8**.

2.3.2 District has negotiated with Microsoft for Microsoft to complete certain actions as consideration for relocation of the District's Visitor Center to accommodate Microsoft's expansion of the North Access Road. These actions will be memorialized in the Relocation Agreement between District, City and Microsoft. Fulfilling the terms of the Relocation Agreement shall be a condition precedent to Microsoft's expansion of the North Access Road and modification of the District's interest in the site as set forth in Revised Exhibit B.

(a) Following District's written acceptance of the Relocation Project, the Premises will be as depicted in the Revised Exhibit B-1 attached to this Amendment and references in the Agreement to Revised Exhibit B shall refer to Revised Exhibit B-1. A portion of the Premises to be used by District for vehicle parking shall be subject to a non-exclusive easement granted to Microsoft as depicted in Revised Exhibit B-1. If there is a conflict between the Relocation Agreement and this Agreement concerning the Relocation Project, the terms of the Relocation Agreement shall prevail.

(b) The Parties agree that the representations and warranties in Sections 5.1 and 5.2 of the Agreement concerning the Premises: (1) as depicted in the attached Revised Exhibit B are made as of effective date of the First Amendment to Ground Lease and Property Use Agreement and (2) as depicted in the attached Revised Exhibit B-1 are made as of the date the District accepts the Relocation Project.

SECTION 4. Section 3 "TERM" is amended to read as follows:

The term of this Agreement shall commence on the July 1, 2010, and, unless sooner terminated or extended as herein provided, shall terminate at 11:59 on June 30, 2065.

SECTION 5. Section 5.1 “Authorized Use” is amended to read as follows:

Use of the Premises and Ancillary Property shall be strictly limited to construction and operation of the AWTF, DPR Demonstration Facility and Related Facilities, and public tours of the AWTF and DPR Demonstration Facility. Neither District, nor any of its employees or agents, shall conduct, transact or otherwise carry on any business or service on the Premises that is not specifically authorized by this Agreement. Use of the Ancillary Property is further subject to the “Special Terms and Conditions for Use of Ancillary Property” set forth in Exhibit D attached hereto and incorporated by reference herein.

SECTION 6. Section 6.1 “Inspections” is amended to read as follows:

District shall ensure that its employees and agents make regular inspections of the Premises and Ancillary Property for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the AWTF, DPR Demonstration Facility and Related Facilities required under this Agreement.

SECTION 7. Section 6.3 “AWTF Operational Parameters” is amended to read as follows:

District shall operate the AWTF, DPR Demonstration Facility and Related Facilities so as to provide microfiltration for up to 12 mgd of secondary treated wastewater produced by the Plant and up to 8 mgd reverse osmosis product water to SBWR, in accordance with the additional operational parameters set forth in Revised Exhibit E.

SECTION 8. Section 7.1 “Maintenance” is amended to read as follows:

District shall be obligated, at all times, throughout the term of this Agreement, without cost to City, to maintain the Premises, AWTF and Related Facilities and all Subsequent Alterations or Improvements including the DPR Demonstration Facility in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. District shall maintain all improvements on the Premises, whether installed by District or City. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director, which approval shall not be unreasonably withheld. When used in this Agreement, the term “maintenance” shall include all repairs, alterations, maintenance and/or removals reasonably deemed necessary by Director in order to ensure that the AWTF, DPR Demonstration Facility and Related Facilities will consistently operate pursuant to the operational parameters set forth in Exhibit E. Landlord may enter the Premises at any time during regular business hours, to determine if District is in

compliance with the requirements of this Section 7. If, following any such inspection by Landlord, Landlord delivers notice of any deficiency to District; District shall promptly prepare and deliver to Landlord, District's proposed plan for remedying the indicated deficiencies. Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to District, shall not be deemed to be Landlord's approval of the then condition of the Improvement, nor Landlord's waiver of any default by District under this Section 7.

SECTION 9. Section 8.1 "Construction of AWTF and Ancillary Facilities" is amended to read as follows:

Construction of AWTF, DPR Demonstration Facility and Related Facilities

District shall construct an AWTF and DPR Demonstration Facility on the Premises, and Related Facilities on the Ancillary Property, pursuant to and in compliance with all the terms and conditions set forth in this Section 8. District will construct the AWTF, DPR Demonstration Facility and Related Facilities in a manner that includes no Material Change from the Plans & Specifications (except with Landlord's written approval of any such Material Change as provided below). A "Material Change" means any material change from the AWTF, DPR Demonstration Facility and Related Facilities as shown in the Plans & Specifications that (i) use, (ii) density, (iii) building area, (iv) location and dimension of improvements, (v) number and size of filtrations units, (vi) exterior elevations and appearance, (vii) quality of construction materials, finishes and designs, (viii) any other change in the Plans & Specifications that would impact the ability of the AWTF and DPR Demonstration Facility to meet the operational parameters set forth in Exhibit E or otherwise have a material adverse impact on the Plant. In the event District proposes to make a Material Change from the Plans & Specifications, District first must obtain the written consent of Landlord, which Landlord may not unreasonably withhold or delay. Landlord shall have no obligation to approve any change: (i) which shall materially increase or decrease the floor area to be built upon the Premises, (ii) increase or decrease the number of filtration units to be built upon the Premises, (iii) materially increase or decrease the size of the filtration units to be built upon the Premises, (iv) to the uses which are permitted upon the Premises or Ancillary Property or (v) impact the ability of the AWTF and DPR Demonstration Facility to meet the operational parameters set forth in Exhibit E or otherwise have a material adverse impact on the Plant.

SECTION 10. Section 8.2 "AWTF and Related Facilities Construction Schedule" is amended to read as follows:

District agrees to use commercially reasonable efforts to cause the AWTF and Related Facilities to be commenced by October 1, 2010 and completed by September 30, 2012.

SECTION 11. Section 8.5 “Construction Standards” is amended to read as follows:

- (a) General Construction Standards. Once commenced, construction of the AWTF and Related Facilities and any approved Subsequent Alterations and Improvements shall be diligently prosecuted to completion, subject to Unavoidable Delays, by a licensed contractor selected by District selected by District pursuant to public competitive bidding process.
- (b) Compliance with Construction Documents and Laws. District shall construct or cause to be constructed the AWTF and Related Facilities and any Subsequent Alterations and Improvements on the Premises and Ancillary Property in substantial compliance with any documents relating thereto which have been approved by Landlord and in compliance with all applicable local, state, and federal laws and regulations. Without limiting the generality of the foregoing, District shall comply with the Mitigation Monitoring and Reporting Programs that are contained in the Mitigated Negative Declaration for the AWTF and Related Facilities and with any subsequent environmental mitigation and/or monitoring program adopted by the District Board for any Subsequent Alterations and Improvements. As between Landlord and District, District shall have the sole responsibility for implementing all necessary safeguards for the protection of workers and the public.
- (c) Governmental Approvals. District shall obtain, at its sole cost and expense, all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install any improvements and to conduct the Authorized Activities, including, but not limited to, all plans and specifications approvals, site development reviews, development permits, and building permits. The Director’s approval shall not be deemed to include the approval of any other City department or governmental or public entity, which District may be required to obtain.
- (d) Hazardous Materials. District shall incorporate into any Construction Contract for the AWTF and Related Facilities and any Subsequent Alterations and Improvements, and shall require its contractor to incorporate into any subcontracts or contracts for materials or equipment: the requirements related to prevention and mitigation of Hazardous Materials releases in conformity with Exhibit F.
- (e) Prevailing Wages. District shall incorporate into any Construction Contract for the AWTF and Related Facilities and any Subsequent Alterations and Improvements, and shall require its contractor to incorporate into any subcontracts, the Prevailing Wage requirements set forth in Revised Exhibit G.
- (f) Bonding Improvements. At least ten (10) business days prior to the commencement of construction of the AWTF and Related Facilities or any Subsequent Alterations and Improvements having a value in excess of Twenty-Five Thousand Dollars (\$25,000), District shall provide to Landlord, copies of

payment and performance bonds, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Premises or Ancillary Property and/or Improvements, naming Landlord as an additional obligee, in such form as may be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. At the discretion of City's Director and upon approval of City Attorney for City, the performance bond requirement may be waived.

(g) Insurance. At least ten (10) business days prior to the commencement of construction of the AWTF and Related Facilities or any Subsequent Alterations and Improvements, District shall provide City with certificates of insurance acceptable to City, Insurance Coverage shall meet, at a minimum, the requirements set forth in Section II of Revised Exhibit H attached hereto and incorporated herein.

(h) Asbestos Containing Materials. No asbestos-containing materials will be installed for any purposes on or as part of the Premises or Ancillary Property, whether as part of District's or District's Parties' business operations or as District improvements, unless specifically identified on the Plans & Specifications or approved in advance in writing by Landlord.

(i) Underground Storage Tanks. District shall not install or use any aboveground or underground storage tanks on the Premises or Ancillary Property unless specifically shown in the Plans & Specifications approved in advance, in writing, by Landlord, which approval may be withheld in Landlord's sole discretion. If Landlord approves District's installation or use of aboveground or underground storage tanks, District will be responsible for compliance with all applicable requirements and Environmental Laws, including, but not limited to, financial assurance requirements, and must furnish evidence satisfactory to Landlord of that compliance. District will also test the soil for settling and conduct appropriate tests of the tank and associated piping and equipment at the time of installation to assure that the tank has been properly installed.

(j) No Landlord Duty. Landlord's approval, review or modification of any plans, specifications or other construction documents with regard to Improvements (or any other work by District) is for Landlord's internal purposes only. Any Landlord review or approval specifically shall exclude review for the purpose of determining whether the reviewed documents contain any defects in the design, construction, or installation of improvements and Landlord shall have no liability or responsibility for any loss, damage, or injury arising out of or in any way connected with the design, construction, or installation of the any improvements on the Premises. Likewise, Landlord's review shall specifically exclude any review for purposes of determining whether the reviewed documents comply with laws, ordinances, rules or regulations applicable to the proposed work. By approving, reviewing, modifying or otherwise commenting on any of District's plans, specification or other construction documents, Landlord shall not be deemed to make any express or implied warranty of the reviewed matters for

any intended use or purpose. The scope and breadth of any review by Landlord is at Landlord's sole discretion and cannot be relied upon, or deemed for the benefit of, any other party.

(k) Landlord Access. Representatives of Landlord shall have the right of reasonable access to the Improvements without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Agreement. Landlord's access shall be reasonably exercised to minimize interference with District's construction and/or operations. In any site visits, Landlord shall comply with all safety rules and requirements of the contractor.

(l) Preconstruction Meetings. Prior to beginning construction, District shall arrange one or more meetings among Landlord, District, the general contractor and District's other construction professionals and consultants as Landlord shall reasonably request be included to discuss construction matters, including construction hours, truck access, dust abatement, marshalling and storage areas and any other matters that may be of concern to Landlord or which may be of concern to neighbors.

(m) Protection of Landlord. Nothing in this Agreement shall be construed as constituting the request of the Landlord, express or implied, for the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Improvements or any part thereof for Landlord's account or benefit by any contractor, subcontractor, laborer or materialman. Landlord shall have the right, at all reasonable times, to post, and keep posted on the Premises, any notices which Landlord may deem necessary for the protection of Landlord and of the Premises, and the Improvements thereon from mechanics' liens or other claims. District shall give Landlord ten (10) days prior written notice of the commencement of any work to be done on the Improvement to enable Landlord to post such notices. In addition, District shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to District or any of its contractors or subcontractors in connection with the Premises and the improvements thereon.

(n) Mechanics Liens. Although Landlord believes that California law prohibits any mechanics' lien from attaching to the Premises, nevertheless, District shall keep the Premises, and the Improvements free and clear of all claims for mechanics' liens and other liens on account of work done for District or persons claiming under it. District agrees to and shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or materials or supplies furnished to District or persons claiming under it. In the event any lien is recorded and is not removed or discharged within 30 days, without reference to its validity District shall, upon demand, furnish the bond described in California Civil Code Section 3143, or any

other applicable or successor statute, which results in the removal of such lien from the Improvement.

(o) Notice of Completion. Upon completion of construction of any improvements, District shall file, or cause to be filed, in the Official Records of the County of Santa Clara, a Notice of Completion (the "Notice of Completion") with respect to that Improvement.

(p) As Built Drawings. Upon completion of each improvement, District shall provide to Director two (2) completed sets of as-built drawings, a pdf and CAD files on flash drive if District produces drawings on disks, and a break-down which shows all costs incurred for completing such improvement. District agrees that, upon the request of Director, District will inspect the Premises jointly with Director to verify the as-built drawings.

SECTION 12. Section 8.6 "No Right to Demolish" is amended to read as follows:

Notwithstanding any other provisions of this Section 8, District shall have no right to demolish Improvements, once built, unless District shall have received the prior written consent of Landlord, it being agreed that Landlord has entered into this Agreement in material reliance on District's covenants to construct the AWTF, DPR Demonstration Facility and Related Facilities in accordance with the Plans & Specifications and to operate and maintain the AWTF, DPR Demonstration Facility and Related Facilities in accordance with the provisions of this Agreement.

SECTION 13. Section 10 "UTILITY SERVICES" is amended to read as follows:

10.1 General.

Except as provided in Sections 10.2 and 10.3 below, District shall secure and directly pay for any electrical, gas, water, sewer, and telephone services to the Premises utilized by the District as it may require, upon prior approval of Director. Installation of such additional utility connections shall be at District's sole cost and expense and are subject to the provisions of Section 8 regarding District improvements. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director. District shall, upon request by the Director, cap off all utility connections installed by District and restore the affected areas to their original condition upon expiration or earlier termination of this Agreement.

10.2 Electrical Service.

At City's option, City may provide electrical services to District through City's existing electrical connection meter for the SBWR transmission pump station. In the event City opts to provide such electrical service, District shall be responsible for all costs and expenses associated with installing such connection and for paying rated share of the electrical bill associated with such service.

10.3 Microfiltration Return Water and Reverse Osmosis Reject.

Microfiltration return water from the AWTF and DPR Demonstration Facility shall be treated by the Plant and reverse osmosis reject (brine concentrate) shall be either blended with Plant effluent in the Plant's chlorine contact basin prior to discharge to San Francisco Bay, or treated by the Plant.

SECTION 14. Section 13 "ASSIGNMENT OR TRANSFER" is amended to read as follows:

13.1 No Transfer Without Landlord Consent.

District shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Agreement, the Premises or any part thereof, or any rights or obligation of District hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion.

13.2 Definition of Transfer.

A transfer within the meaning of this Section shall include, but is not limited to, the contracting or subcontracting for operation and maintenance of the AWTF, DPR Demonstration Facility or Related Facilities to any entity other than Landlord.

13.3 Consideration for Approval of Transfer.

In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Premises; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer. In addition, City's consent to any proposed transfer under this Agreement may be conditioned upon, among other things, the express written assumption by the proposed transferee of District's obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Premises. City agrees that it will in good faith consider such encumbrances in favor of state or federal agencies as may be necessary to secure the grants for construction of the AWTF, DPR Demonstration Facility and Related Facilities that are referenced in the Integration Agreement.

13.4 Consent Not Waiver.

The consent of City to any transfer described in this Section shall not relieve District of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default.

SECTION 15. Section 14 “TERMINATION OF AGREEMENT” is amended in its entirety to read as follows:

14.1 Breach and Events of Default.

An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (severally “Event of Default” and collectively “Events of Default”):

- (a) District shall have failed to perform the following and failed to cure the same within thirty (30) days after written notice from City; provided, however, that if the nature of District's default is such that more than thirty (30) days are reasonably required for its cure, then District shall not be deemed to be in default if District commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director:
 - (i) Pay when due any rent, fee, charge or obligation of District requiring the payment of money under the terms of this Agreement; or
 - (ii) Commence construction of the AWTF and Related Facilities by September 30, 2012; or
 - (iii) Maintain any insurance required under Section 17.
- (b) District shall have failed to perform any term, covenant, or condition of this Agreement related to the City’s ability to comply with regulatory requirement and meet the operational needs of the Regional Wastewater Facility.
- (c) Any representation or warranty made by District hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- (d) District shall have made a general assignment of its assets for the benefit of its creditors; or
- (e) District shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or
- (f) District shall have failed to occupy the Premises or to maintain continuous operations at the Premises, in each case, for any thirty (30) consecutive days, without approval by City, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or
- (g) A court shall have made or entered any decree or order: (i) adjudging District to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of District or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee

or assignee of District in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of District and such decree or order shall have continued for a period of sixty (60) days; or (v) District shall have voluntarily submitted to or filed a petition seeking any such decree or order; or

- (h) The sequestration or attachment of or execution or other levy on District's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and District shall have failed to obtain a return or release of such property within sixty (60) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (i) The revocation or termination of any certificate, permit, franchise, approval, authorization or power necessary for District to lawfully conduct the operations which District is required or permitted to conduct on the Premises; or
- (j) Any lien shall be filed against the Premises because of any act or omission of District, and shall not be discharged or contested by District in good faith by proper legal proceedings within thirty (30) calendar days after receipt of notice thereof by City.

14.2 Remedies for Default.

Upon an Event of Default, City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Agreement, to which City may resort cumulatively, or in the alternative:

- (a) City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the District, and without a waiver of such breach, perform any act which if performed by District would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of any monies or the incurring of any costs or expenses, District covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the rate of one percent (1%) per month plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefore. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.
- (b) In addition to any other remedy that City may have, City may, at its election, terminate this Agreement upon written notice of termination in which event this Agreement shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve District from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against District. In no event shall any one or more of the following actions by City, in the

absence of a written election by City to terminate this Agreement, constitute a termination of this Agreement:

- (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
 - (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Agreement by District, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of District and in the name of District
- (c) This Agreement shall not terminate following an Event of Default and an abandonment of the Premises unless City gives District written notice of its election to terminate this Agreement. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of District's right to possession unless City gives District written notice of termination.
- (d) In the event City terminates this Agreement, City shall be entitled to damages in the following sums:
- (i) The worth at the time of award of all unpaid rental fees and other fees which have been earned at the time of termination;
 - (ii) The worth at the time of award of the amount by which the unpaid rental fees and other fees which would have been earned after termination until the time of award exceeds the amount of such rental fee or other fee loss that District proves could have been reasonably avoided;
 - (iii) Any other amount necessary to compensate City for all detriment or damage to the Premises proximately caused by District's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, to fulfill its obligation to return the Premises to the City in the condition existing as of the date this Agreement was entered into, reasonable wear and tear excepted;

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

- (e) No payment by District, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by District hereunder shall be deemed to be other than on account of the earliest rent, fee, charge or other amount due, nor shall any endorsement or statement on any

check from District, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such rent, fee, charge or other amount or to pursue any other right or remedy available to City.

- (f) No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

14.3 Automatic Termination.

Intentionally Deleted.

SECTION 16. Section 16.2 "Assumption of Risk" is amended to read as follows:

District agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of District, its directors, officers, employees, agents, and contractors which may occur in, on, or about the AWTF, DPR Demonstration Facility, Related Facilities, the Premises or Ancillary Property as a result of natural conditions that exist on the Premises, and conditions associated with the operation of the Plant, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents. Nothing contained in this Section 16.2 is intended to impede District from pursuing any claims against third parties.

SECTION 17. Section 17.1 "Insurance Requirements" is amended to read as follows:

District agrees to have and maintain the policies set forth in **Revised Exhibit G**, entitled "Insurance", which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to review and approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager recommend any change in any coverage such recommendation shall be discussed by the Technical Working Group and reviewed by the Recycled Water Policy Advisory Committee.

SECTION 18. Section 19 "RIGHT TO ENTER" is amended to read as follows:

City reserves and shall have the right by its officers, employees, agents and contractors, and co-owner and Plant contract agency representatives to enter into and upon the Premises at all reasonable times (and in emergencies at all times), and will provide notice to District whenever practicable:

- (a) To make any inspection, Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement;
- (b) To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises;
- (c) To otherwise maintain the Premises, the building in which the Premises is located and the Premises, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- (d) To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so.

SECTION 19. Section 34.4 “Exhibits and Addenda” is amended to read as follows:

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

The Exhibits attached to this Agreement are:

Revised Exhibit A	WPCP Property
Exhibit A-1	WPCP Property (Microsoft Alternative)
Revised Exhibit B	AWTF and DPR Demonstration Facility Premises
Exhibit B-1	AWTF and DPR Demonstration Facility Premises (Microsoft Alternative)
Revised Exhibit C	Ancillary Property
Revised Exhibit D	Special Terms and Conditions for Use of Ancillary Property
Revised Exhibit E	Operational Parameters
Revised Exhibit F	Hazardous Materials
Revised Exhibit G	Insurance Requirements
Revised Exhibit H	Prevailing Wage
Revised Exhibit I	Memorandum of Ground Lease

SECTION 20. A new Section 34.21 is added to the Agreement to read as follows:

34.21 Pursuant to Section 34.11 of the Agreement, the Parties shall execute and the District shall record the short form of memorandum attached hereto as Exhibit I with Santa Clara County Clerk Recorders Office.

SECTION 21. A new Section 34.22 is added to the Agreement to read as follows:

34.22 This Amendment 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.

SECTION 22. A new section 34.23 is added to the Agreement to read as follows:

34.23 This Amendment shall be governed by the laws of the State of California.

SECTION 23. Section 35 “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, 10th Floor Tower
San Jose, 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 24. All of the terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

“CITY”

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

LEANNE BOLANO
Deputy City Attorney

TONI TABER, MMC
City Clerk

“DISTRICT”

APPROVED AS TO FORM

SANTA CLARA VALLEY WATER DISTRICT, a special district

BRIAN HOPPER
Senior Assistant District Counsel

RICK CALLENDER
Chief Executive Officer

REVISED EXHIBIT A

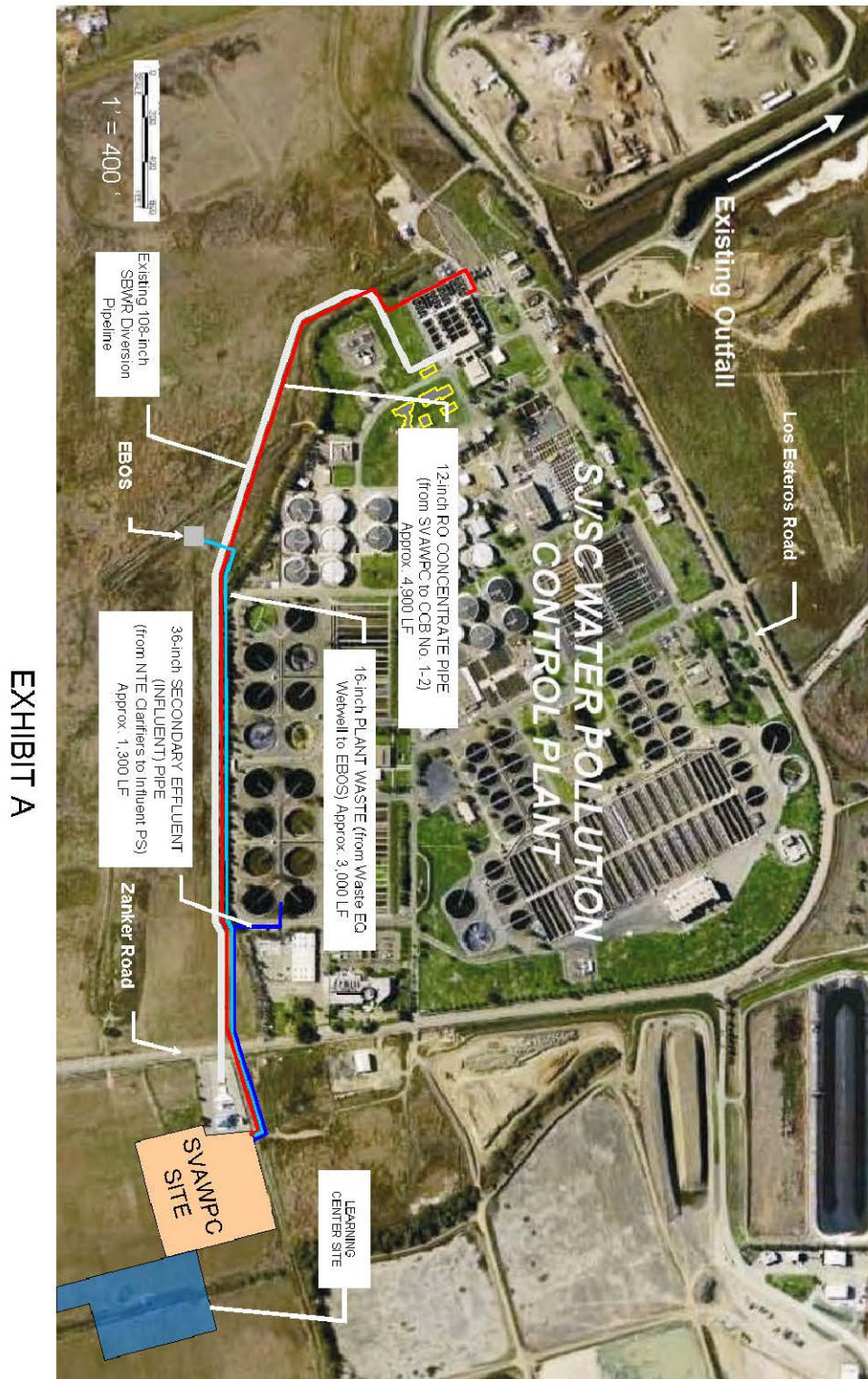


EXHIBIT A-1

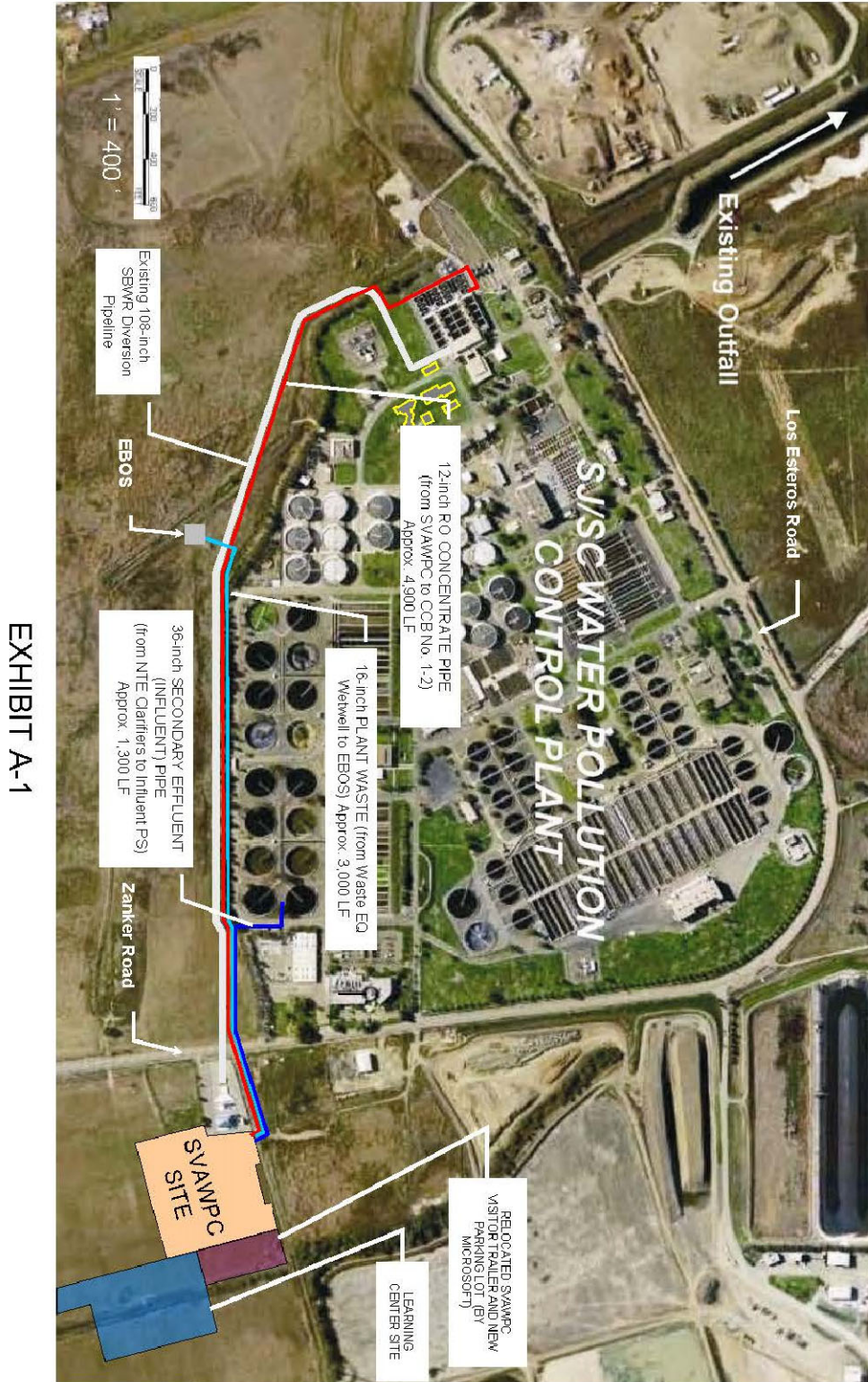


EXHIBIT A-1

REVISED EXHIBIT B



EXHIBIT B-1

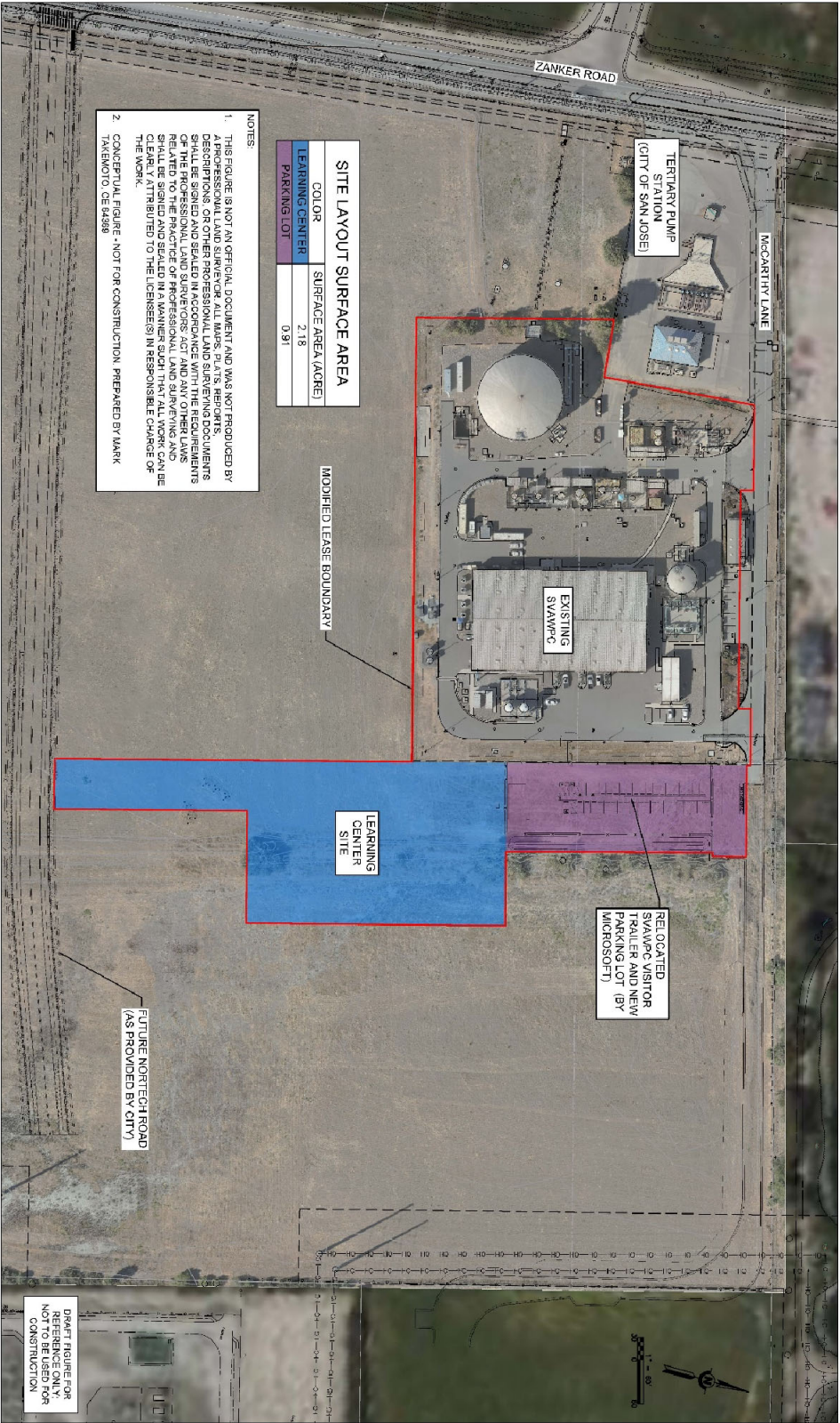


EXHIBIT B-1

REVISED EXHIBIT C

[INSERT LEGAL PLAT MAP]

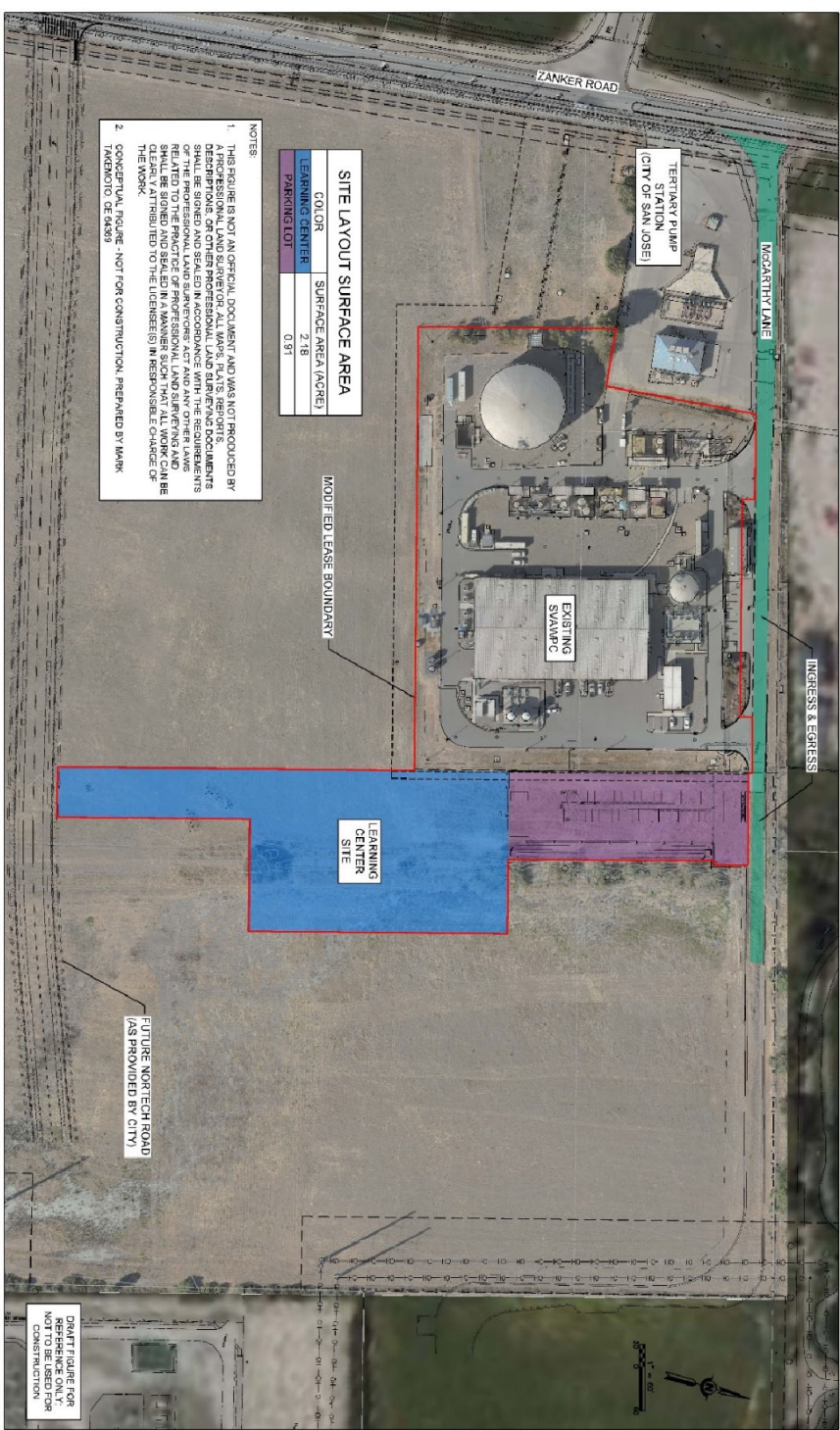


EXHIBIT C

REVISED EXHIBIT D

SPECIAL TERMS AND CONDITIONS FOR USE OF ANCILLARY PROPERTY

1. The Related Facilities shall be located on the Ancillary Property so as to avoid conflict and interference with existing and planned Plant facilities, improvements and uses. Final location of the Related Facilities and the boundaries of the Ancillary Property shall be subject to approval of City's Director.
2. Use of the Ancillary Property is subject to all prior unexpired permits, agreements, easements, privileges, or other rights, whether recorded or unrecorded, in the area specified in this permit. District shall make arrangements with holders of such prior rights.
3. The right to use the Ancillary Property is valid only as to the District and is not transferable.
4. No access shall be made until City has received a schedule for the proposed access, and a list of the names of all DISTRICT employees and contractors who will be entering the City Property under this Agreement.
5. DISTRICT shall be responsible for location and protection of all underground utilities and for avoiding any conflicts with any Plant facilities and/or operations. All underground utilities will be located by the DISTRICT and communicated to the City, and the method of filling the borehole will be disclosed. The final location of the borehole and method of drilling shall be approved by City's Wastewater Facility General Manager or designee on behalf of the City before drilling is to commence. As required by law, Underground Service Alert will be notified a minimum of 48 hours before any field work begins.
6. The right to use the Ancillary Property may be revoked, modified or canceled at any time by the City when required for Plant purposes; provided that City shall make all reasonable efforts to identify an alternate location on City property for any affected the Related Facilities.
7. Upon written notice of cancellation or revocation of the right to use the Ancillary Property, District shall restore City's Property to the condition prior to the granting of the right to use the Ancillary Property and then shall vacate City property. Should District neglect to restore the premises or structures to a satisfactory condition, the City may perform such work or have work performed, and District agrees to reimburse the City for all costs of the work so performed upon receipt of a statement therefore.
8. Trench safety has not been checked and is not implied with this grant of right to use. Compliance with Section 6705 of the Labor Code concerning trench excavation and the obtaining of a "Permit to Excavate" issued by the Division of Occupational Safety and Health as required by Labor Code Section 6500 shall be the responsibility of District.

9. District shall be responsible for compliance with California Labor Code Section 6300 (and following).
10. All backfill on the Ancillary Property shall be compacted to at least 90 percent relative compaction which shall be determined using maximum dry density based on ASTM D1557 laboratory test procedure. Field dry density and water content of soil should be determined following the ASTM D1556 or ASTM D2922 / ASTM D3017 standard procedure as applicable.
11. District will be responsible for verifying the location of the proposed work and facilities in the field.
12. District will be responsible to adjacent property owners for disturbances, including but not limited to noise and dust, caused by operations permitted hereunder.
13. District shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
14. District will be responsible to return the City's Property to its original condition or better upon completion of the construction activity.
15. If weather or other adverse circumstances cause a public hazard or would interfere with Plant operations, use of the Ancillary Property shall be immediately discontinued.
16. No access will be allowed during or after storm events when the City Property is prone to damage. Before entering City Property, District shall assess the structural condition of any access roads/soil to ascertain whether or not the roadway/soil can support vehicles. Only if it is determined that the material is sound can vehicular traffic enter City property. If damage occurs, the District is required to report the damage to the City's Inspector within 48 hours of it occurring. District shall submit a work plan and schedule outlining the repair measures to be installed within one week of the damage occurring.
17. Construction materials and wastes, including drill cuttings shall be hauled offsite.
18. District shall submit to the City a fully completed "Import Material Certification Form" for any soils that will be placed or stored on City Property that do not originate from within the legal boundaries of such right of way.
19. Any damage caused to Plant structures, improvement, vegetation or landscaping including, but not limited to, fencing, maintenance road surfacing, and pipelines by reason of exercise of the right to use the Ancillary Property shall promptly be repaired at the cost of District to the satisfaction of the City. If the repair is not so performed by District, City shall have the right (but not the obligation) to perform the necessary repair. Upon receipt of the notice of repair costs, District agrees to promptly reimburse City for the repair costs incurred, plus an additional amount equal to ten

percent (10%) thereof for administrative overhead. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.

20. District shall implement all measures necessary to mitigate environmental impacts of its activities, including but not limited to: dust control measures to avoid air quality impacts from fugitive dust; specific measures to avoid burrowing owl habitat and biological impacts, including but not limited to, conducting no more boring activities within fifty-(50) feet of any existing owl burrow; specific measures to avoid impacts to cultural resources, including but not limited to, having a qualified archaeologist onsite during the testing to examine any materials exposed during testing and make specific recommendations regarding appropriate mitigation that the District shall perform. In the event that any archaeological artifacts or human remains are encountered, all work shall stop immediately within fifty-(50) feet of the find, the City shall be contacted, and the archaeologist consulted. In the event of the discovery of any human remains, the County Coroner shall also be contacted to determine the appropriate disposition of the remains (to ensure there will be no impact on Native American or early historic era burials); and all measures identified in District mitigated negative declaration.
21. District agrees to waive, release, defend, indemnify and hold harmless City and its officers, agents, and employees against all claims for loss, damage, or liability arising out of the exercise of rights granted hereunder by District, its employees, agents, or contractors, whether for loss of or damage to property, or injury to or death of persons, including but not limited to any claims related to Hazardous Materials generated, stored, used, or disposed of by the Plant, provided however, DISTRICT shall not be responsible for any cleanup of Hazardous Materials not generated, stored, used, or disposed of, by DISTRICT. **DISTRICT ACKNOWLEDGES THAT IT IS AWARE THAT EXERCISE OF THE RIGHTS GRANTED MAY EXPOSE ITS EMPLOYEES, AGENTS, AND CONTRACTORS TO INHERENTLY DANGEROUS ACTIVITIES CONDUCTED BY THE CITY ON THE CITY PROPERTY AND DISTRICT IS VOLUNTARILY EXERCISING THE RIGHTS HEREBY GRANTED WITH KNOWLEDGE OF THE DANGER INVOLVED.**
22. NOTHING CONTAINED IN THIS PERMIT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY THE CITY.

REVISED EXHIBIT E

OPERATIONAL PARAMETERS

Treatment strategies and operational requirements for the DPR Demonstration Facility are specified in the Amended and Restated Agreement between the City of San José and the Santa Clara Valley Water District for Operation and Maintenance of the Silicon Valley Advanced Water Purification Center.

TREATMENT STRATEGY

Two different strategies were developed to provide additional flexibility for the SBWR system and to increase the tertiary filter capacity at the SJ/SC WPCP during winter periods. The summer period is defined from May through November and the winter period from December through April.

Summer Operation

Under the summer operation mode, the AWTF would utilize the microfiltration/reverse osmosis/ultraviolet (MF/RO/UV) treatment train to produce high-purity recycled water, which would be blended with SJ/SC WPCP tertiary effluent to meet the summer recycled water demands and the target SBWR TDS goal of 500 mg/L. The recycled water supply sources for the SBWR system during summer operations are summarized in Table 1.

Table 1: SBWR Supply Sources – Summer Operation

Supply Source	Projected Year 2010 Flows, mgd		Projected Year 2015 Flows, mgd		Projected Year 2020 Flows, mgd	
	Avg.	Max Day	Avg.	Max Day ¹	Avg.	Max Day ¹
ARWTF MF/RO/UV	6.50	8.00	8.00	8.00	8.00	8.00
SJ/SC WPCP Tertiary Effluent	6.70	12.70	9.50	19.40	13.80	26.10
Total Combined Flow	13.20	20.70	17.50	27.40	21.80	34.10

¹ ARWTF MF/RO/UV capacity may be less than desired to meet target SBWR TDS.

For summer operations, nitrified secondary effluent from SJ/SC WPCP conveyed to the AWTF would be pretreated by MF/UF, then demineralized through the RO process, and disinfected through UV disinfection. The AWTF product water would be stored in a 2.25 MG (useable volume) Product Water Storage Tank and flow paced, using a flow control valve, to the SBWR Transmission Pump Station (“TPS”) to blend with SJ/SC WPCP tertiary effluent.

Winter Operation

The low recycled water demand during the winter period (December-April) would enable the AWTF to meet this demand on its own, without blending with the SJ/SC WPCP

tertiary effluent and also capable of generally meeting a lower SBWR TDS goal of 400 mg/L. This would increase the tertiary filter capacity at the SJ/SC WPCP during winter periods. The recycled water supply sources for the SBWR system during winter operations are summarized in Table 2.

Table 2: SBWR Supply Sources – Winter Operation

Supply Source	Projected Year 2010 Flows, mgd		Projected Year 2015 Flows, mgd		Projected Year 2020 Flows, mgd	
	Avg.	Max Day	Avg.	Max Day ¹	Avg.	Max Day ¹
ARWTF MF/UV	1.00	4.20	2.00	4.00	2.50	4.60
ARWTF MF/RO/UV	2.00	4.10	2.00	5.40	2.40	4.80
SJ/SC WPCP Tertiary Effluent	0.00	0.00	0.00	1.60	0.00	4.30
Total Combined Flow	3.00	8.30	4.00	11.00	4.90	13.70

¹ ARWTF capacity may be sufficient to meet entire maximum day recycled water demand.

As indicated above in Table 2, the initial AWTF treatment capacities alone may not be sufficient to meet projected maximum day winter demands for year 2015 and 2020. If so, tertiary effluent from the SJ/SC WPCP would supplement flows from the AWTF.

During winter operations, nitrified secondary effluent from SJ/SC WPCP would be treated by the MF/UF membranes at the AWTF, but only a portion of the MF/UF filtrate would be demineralized by the RO process. The remainder of the MF/UF filtrate would be bypassed around the RO membranes and conveyed directly to the UV disinfection process. Bypass piping and isolation valves would be provided in the UV Disinfection System to dedicate a section of the UV System for disinfection of the MF/UF filtrate, and the remaining section of the UV System for disinfection of the RO permeate. The recommended flow split would result in a blended TDS in the range of 400 mg/L to 500 mg/L. During the summer, the entire RO permeate flow would be treated by the UV System.

BRINE DISCHARGE STRATEGY

A brine stream up to 2 million gallons per day (mgd) with 10,000 mg/L dissolved solids or comparable mass discharge consisting of the reject water from the reverse osmosis component of the Advanced Water Treatment Facility may be returned to a selected location in the chlorine contact facility or other specified location at the San Jose/Santa Clara Water Pollution Control Plant (Plant) designated for direct discharge to the effluent outfall channel facilities, provided that the discharge of such material is compatible with the ability of the Plant to meet its National Pollutant Discharge Elimination System (NPDES) permit as administered by the San Francisco Bay Regional Water Quality Control Board or the State Water Resources Control Board. In the event that the quality of water discharged from the Plant fails to meet required limits or is anticipated to fail to meet required limits based on current trends, CITY will investigate the source of the water quality problem. CITY's investigation will include but

will not be limited to tests to determine the source of constituent concentration or toxicity contributing to the Plant's failure to meet regulatory limits, including tests of various influent sources of flow into the Plant including the AWTF brine stream. In the event that the AWTF brine stream is determined to be the source of constituent concentration or toxicity contributing to the Plant's failure to meet regulatory limits, CITY will discuss alternatives with DISTRICT prior to taking corrective actions which may include interrupting or suspending discharge of the brine stream to the Plant, or requiring District to make other arrangements for brine disposal in order to continue to operate the Advanced Water Treatment Facility.

LIMITATIONS ON PROVISION OF SECONDARY TREATED WASTEWATER AND AWTF PRODUCT WATER

District understands and acknowledges that City is charged with the responsibility to operate the Plant and its City's sewage systems in a manner which it determines to be most beneficial to the users thereof and that factors beyond the control of City could cause operational difficulties at the Plant or in the sewage system resulting in the need to temporarily reduce or suspend the provision of secondary effluent to District. The rights of District to secondary effluent under this Agreement pertain only to the secondary treated effluent which actually is provided by the Plant to the AWTF. Nothing contained herein shall be construed to qualify in any manner City's right to operate the Plant at such level as it determines, in its absolute discretion to be appropriate, or to discontinue the operation of the Plant. Any right of District to secondary treated effluent pursuant to this Agreement shall be subordinate to the rights and responsibilities of City as herein set forth. In the event that City temporarily reduces or suspends provision of secondary effluent to District, City shall use its best efforts to re-establish the production of secondary effluent of a suitable quality and quantity as soon as reasonably possible and shall re-establish District's supply of such water accordingly.

City recognizes that factors beyond the control of District could cause operational difficulties at the AWTF resulting in the need to temporarily reduce or halt the production of AWTF product water. In such cases, District may temporarily reduce or suspend provision of AWTF product water to City. District shall use its best efforts to re-establish the production of AWTF product water of a suitable quality and quantity as soon as reasonably possible and shall re-establish City's supply of such water accordingly.

REVISED EXHIBIT F

HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this Ground Lease, District agrees to the following provisions:

1. Notification Requirements. District shall be solely and fully responsible for:

- (a) notifying the appropriate public agencies of any Hazardous Material release which occurs on the Premises, or is caused by or results from the activities of District, District's officers, agents, employees, contractors, permittees or invitees on the Land other than the Premises;
- (b) immediately after learning thereof, notifying City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from District's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Land other than the Premises and is caused by or results from the activities of District. District's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.;
- (c) giving immediate written notice to Landlord of:
 - (i) any enforcement, remediation, or other regulatory action or order, taken or threatened, by any Agency regarding, or in connection with, the presence, release or threat of release any Hazardous Material on, under, about, or from the Premises, or any tanks on the Premises, or otherwise resulting from District's use of the Premises;
 - (ii) all demands or claims made or threatened by any third party against District or District's Parties or the Premises relating to any liability, loss, damage, or injury resulting from the presence, release, or threat of release any Hazardous Materials on, under, about, or from the Premises or otherwise resulting from District's use of the Premises;
 - (iii) all incidents or matters where District and District's Parties are required to give notice to any Agency pursuant to applicable Environmental Laws.
- (d) promptly providing Landlord with copies of all materials, reports, technical data, Agency inspection reports, notices and correspondence, and other information or documents relating to incidents or matters subject to notification hereunder; and
- (e) promptly furnishing to Landlord copies of all permits, approvals, and registrations District receives or submits with respect to District's operations on the Premises, including, without limitation, any underground storage tank registrations, installation permits, and closure permits.

2. Liability. District shall be solely and fully responsible and liable for:
 - (a) any Hazardous Material Release which is caused by or results from the activities of District, District's officers, agents, employees, contractors, or subcontractors on the Land.
 - (b) any Hazardous Material Release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of District.
 - (c) any Hazardous Material release that commences during the term of the Ground Lease on the Premises, unless District establishes through investigation, sampling, testing and analysis acceptable to the City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a source off the Premises.
3. Prevention of Release. District shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Land, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.
4. Obligation to Investigate and Remediate. District, at District's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:
 - (a) any release or danger of release of Hazardous Material on the Land other than the Premises, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which was caused, or results, in whole or in part from the activities of District, District's officers, agents, employees, contractors, and subcontractors;
 - (b) any Hazardous Material release which is caused by or results from the activities of permittees or invitees on the Land if the same was caused by the negligent or intentional misconduct of District;
 - (c) any release or danger of release of Hazardous Materials which commenced during the term of this Ground Lease and which is discovered on the Premises, unless District establishes through investigation, sampling, testing and analysis acceptable to City, that the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Premises from a source off the Premises.

Unless an emergency situation exists that requires immediate action, Landlord's written approval of these actions will first be obtained, and the approval will not be unreasonably withheld. Landlord's right of prior approval of these actions includes, but is not limited to, the selection of any environmental consultant to perform work on or related to the Premises, the scope of work, and sampling activities to be performed by the consultant before the report is final. District will provide Landlord with at least three (3) business days' advance notice of any sampling, and upon request of Landlord, will split samples with Landlord. District will also promptly provide Landlord with the results of any test, investigation, or inquiry conducted by or on behalf of District or District's Parties in connection with the presence or suspected presence of Hazardous Materials on, under, about, or

from the Premises. District must notify Landlord in advance and give Landlord the right to participate in any oral or written communications with regulatory agencies concerning environmental conditions on or arising from the Premises. Within thirty (30) days after District's completion of any remediation of the Premises, District must deliver to Landlord a letter from the applicable Agency stating that the remediation was undertaken in accordance with all applicable Environmental Laws and that any residual contamination remaining after the remediation does not pose a threat to human Health or the environment.

The failure to promptly commence remediation and provide City with a schedule for diligent completion of the remediation which thirty (30) days after discovery of such release, or danger of release, of Hazardous Material (or such additional time period of time that is reasonably necessary under the circumstances) shall constituted prima facie evidence of failure to promptly commence remediation. In addition to all other rights and remedies of City hereunder, if District does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay to have same remediated and District shall reimburse City within fifteen (15) business days of City's demand for payment. The reasonable payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of District.

5. Landlord's Right of Entry and Testing. Landlord and Landlord's representatives have the right, but not the obligation, at any reasonable time to enter onto and to inspect the Premises and to conduct reasonable testing, monitoring, sampling, digging, drilling, and analysis to determine if Hazardous Materials are present on, under, or about the Premises and to review and copy any documents, materials, data, inventories, financial data, or notices or correspondence to or from private parties or governmental authorities (collectively, "Inspection"). If the Investigation indicates the presence of any environmental condition that occurred during the Term as a result of District's or District's Parties' activities, or failure to act where District had a duty to act, in connection with the Premises, District will reimburse Landlord for the cost of conducting the tests.
6. Environmental Assessment. Landlord may require District to retain a duly licensed environmental consultant acceptable to Landlord that will perform an environmental compliance audit of the Premises and District's business activities and compliance with the provisions of this Exhibit F. Landlord may require District to cause the environmental compliance audit to be conducted on an annual basis, the cost of which will be the sole responsibility of District. If the results of the environmental compliance audit indicate that District is or may be in violation of this Exhibit F, District will be responsible for the cost of any additional testing required by Landlord. District must promptly provide a copy of the report from the consultant to Landlord upon receipt, and upon request must promptly provide to Landlord a copy of all data, documents, and other information prepared or gathered in connection with the report. District acknowledges that District has been provided an adequate opportunity to conduct District's own environmental investigation of the Premises with independent environmental experts and consultants.

7. Indemnification. District shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

- (a) any Hazardous Material release on the Property other than the Premises, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results directly from the activities of District, District's officers, agents, employees, contractors, and subcontractors; or
- (b) District's breach of any prohibition or provision of this Exhibit F.
- (c) The presence of any Hazardous Materials on or under the Premises during the Term or any Hazardous Materials on or from the Premises which commenced during the Term, including, but not limited to any release into soil or groundwater, except a release which District establishes, through investigation, sampling, testing and analysis acceptable to the City, was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Premises from an identified source off the Premises.

This obligation by District to indemnify, protect, defend, and hold harmless Landlord Indemnities includes, without limitation, costs and expenses incurred for or in connection with any investigation, cleanup, remediation, monitoring, removal, restoration, or closure work required by the Agencies because of any Hazardous Materials present on, under, or about the Premises; the costs and expenses of restoring, replacing, or acquiring the equivalent of damaged natural resources if required under any Environmental Law; all foreseeable consequential damages; all reasonable damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises; all reasonable sums paid in settlement of claims; reasonable attorney's fees; litigation, arbitration, and administrative proceeding costs; and reasonable expert, consultant, and laboratory fees. Neither the written consent of Landlord to the presence of Hazardous Materials on or under the Premises, nor the strict compliance by District with all Environmental Laws, will excuse District from the indemnification obligation.

This indemnity will survive the expiration or termination of this Agreement. Further, if Landlord detects a deficiency in District's performance under this indemnity and District fails to correct the deficiency within ten (10) days after receipt of written notice from Landlord, or such other period of time that is deemed reasonable by the parties under the circumstances, Landlord has the right to join and participate in any legal proceedings or actions affecting the Premises that are initiated in connection with any Environmental Laws. However, if the correction of the deficiency takes longer than ten (10) days, Landlord may

join and participate if District fails to commence corrective action within the ten (10) day period and after that diligently proceeds to correct the deficiency.

8. Release of Claims Against City. District releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which District may now have, or which may hereafter accrue on account of or in any way growing out of all known or unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material for which District is responsible and liable under this Ground Lease. District understands and agrees that District is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

9. (a) Cessation of Activities. District shall cease its activities on the Premises to the extent reasonably requested by City, if City determines, in its reasonable opinion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. District shall not recommence its activities on the Premises until notified by City that such release or danger of release of Hazardous Material has been investigated, cured, and remediated in a manner satisfactory to the City.

(b) Abatement of Fees and Charges on Premises. District shall not be entitled to an abatement of any fees or charges due under this Ground Lease after District has been requested to cease activities for investigation, cure, or remediation of Hazardous Materials on the Premises, except if District establishes, through investigation, sampling, testing and analysis that the presence of Hazardous Materials on the Premises was due to any event for which District is not responsible and liable under this Ground Lease.

10. Records and Inspections.

(a) District shall maintain, during the term of this Ground Lease and for a period of not less than four (4) years after the expiration or termination of this Ground Lease, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's officers, agents, employees, contractors, permittees or invitees on or from the Land.

(b) Upon request by City, District shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Ground Lease, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's

officers, agents, employees, contractors, permittees or invitees on or from the Land.

(c) On the date that is one year from the commencement of the Term and annually after that, District must provide Landlord with a letter certifying that District has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that to the best of District's knowledge no soil or groundwater contamination has occurred on or originated from the Premises.

(d) After the expiration of four (4) years following the termination of this Ground Lease, District may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by District, District's officers, agents, employees, contractors, permittees or invitees on or from the Land, provided, however, that District shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty (30) days after such notice is received.

11. No Third Party Beneficiaries. Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Ground Lease, nor as creating any right in any person not a party to this Ground Lease to enforcement of any obligations created under this Ground Lease.

12. Survival of Obligations. Each party's obligations under this Ground Lease shall survive the expiration or earlier revocation or suspension of this Ground Lease.

REVISED EXHIBIT G
INSURANCE REQUIREMENTS

DISTRICT, at DISTRICT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by DISTRICT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Commercial Form Number CG 0001 on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate; and
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles with a limit no less than \$5,000,000 per accident for bodily injury and property damage; and
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease; and
4. Pollution Liability with limits no less than \$5,000,000 per contamination incident and \$5,000,000 in the aggregate. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions; and
5. Property insurance covering the AWTF, the Related Facilities, and all Subsequent Alterations and Improvements upon the Premises on an "all risk" basis with limits at full replacement cost. Coverage is to include the flood peril with minimum limits of \$5,000,000.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

Any limit requirement may be met with any combination of primary and excess coverage, so long as the excess coverage is written on a follow form or Umbrella basis.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to CITY's Risk Manager.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, DISTRICT; products and completed operations of DISTRICT; premises owned, leased or used by DISTRICT; and automobiles owned, leased, hired or borrowed by DISTRICT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees and agents.
- b. DISTRICT's insurance coverage shall be primary and non-contributory insurance as respects CITY, its officers, employees, and agents.
- c. Any failure to comply with reporting provisions of the policies by DISTRICT shall not affect coverage provided CITY, its officers, employees, or agents.
- d. Coverage shall state that DISTRICT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the CITY, its officers, employees, and agents.

3. Property

Policy shall contain a loss payable clause in favor of CITY as its interest may appear.

4. Claims Made Coverages

If coverage is obtained on a “claims made” policy form, the retroactive date shall precede the date services were initiated with the CITY and the coverage shall be maintained for a period of five (5) years after termination of services under this Agreement.

5. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium. If insurer will not provide 30 days' notice, DISTRICT will be responsible for providing notice to the City within the same time frames described.

D. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

E. Verification of Coverage

DISTRICT shall furnish CITY with certificates of insurance and copies of endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose
Finance Risk Management & Insurance
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113

F. Subcontractors

DISTRICT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. Self-Insurance

The Pollution Liability requirement of this section may be satisfied by the provision of similar coverage through self-insurance program and such self-insurance shall be certified in writing with an “Affidavit of Insurance.”

REVISED EXHIBIT H
PREVAILING WAGE REQUIREMENTS

I. Remedies For District's Breach Of Prevailing Wage/Living Wage Provisions.

A. General. District acknowledges that it has read and understands that, pursuant to the terms and conditions of this Ground Lease, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") District further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
4. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment. District agrees that the Documentation Provision is critical to the City's ability to monitor District's compliance with the Wage Provision and to ultimately achieve the Goals. District further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision.

In light of the critical importance of the Documentation Provision, the City and District agree that District's compliance with this Provision, as well as the Wage Provision, is an express condition of this Ground Lease, and that failure to comply with this provision is a breach of this Ground Lease.

C. Liquidated Damages for Breach of Wage Provision. District agrees its breach of the Wage Provision would cause the City damage by

undermining the Goals, and City's damage would not be remedied by District's payment of restitution to the workers who were paid a substandard wage. District further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and District mutually agree that making a precise determination of the amount of City's damages as a result of District's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, District shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

- D. Audit Rights.** All records or documents required to be kept pursuant to this Ground Lease to verify compliance with the Wage Provision shall be made available for audit at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at District's address indicated for receipt of notices in this Ground Lease.

II. Instructions to Obtain Prevailing Wage Determination

A copy of the current General Prevailing Wage Determination made by the Director of Industrial Relations may be obtained from the Office of Equality Assurance at:

Office of Equality Assurance
200 E. Santa Clara Street
San José, CA 95113
Phone: 408.535.8430
Fax: 408.292.6270

For internet access to current wage rates and benefit information, you may contact the California Department of Industrial Relations web site at <http://www.dir.ca.gov/>. To access and print current prevailing wage rates directly, go to <http://www.dir.ca.gov/DLSR/PWD>. On the General Prevailing Wage Determination screen, scroll down and follow the directions until you locate the trade applicable to your contract. Prevailing wages for City of San José contracts will be found under:

- Step One Statewide,
- Step Two (A) Northern California, or
- Step Four for Santa Clara County

Effective Dates of Determination and of Rates within Determination

Contractors are advised that rates determined by the Department of Industrial Relations are subject to change during the term of this contract as described below.

Effective date of determination. All determinations issued by the Director of the Department of Industrial Relations will be effective ten (10) days after issuance. Determinations issued by the Director will show an issue date and will ordinarily show an expiration date. All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director. Contractors are advised to note the expiration date on the prevailing wage classification identified for this solicitation and the asterisk (*) as explained in the paragraph below.

Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date (which are in effect on the date of advertisement for bids) remain in effect for the life of the project. Prevailing Wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payment to be paid for work performed *after* this date have been predetermined. If work is to be extended past the rate expiration date, the new rate must be paid and should be incorporated in contracts entered into now. Contact the Division of Labor Statistics and Research for specific rates (415) 703-4774.

All determinations that do not have the double asterisks (**) after the expiration date remain in effect for the life of the contract.

EXHIBIT I

Recording Requested by:
City of San José, a
municipal corporation of
the State of California

When recorded, return to:
City Clerk's Office
200 East Santa Clara Street
San José, CA 95113-1905

MEMORANDUM OF FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT

THIS MEMORANDUM OF FIRST AMENDMENT TO GROUND LEASE AND PROPERTY USE AGREEMENT ("Memorandum") is made and entered into this _____ day of _____, 2025 (the "Effective Date"), by and between the City of San José, a charter city, as administering agency for the San José/Santa Clara Water Pollution Control Plant ("Landlord") and the SANTA CLARA VALLEY WATER DISTRICT, a California special district ("District").

1. Lease. The provisions set forth in a written Ground Lease and Property Use Agreement between the parties hereto, dated March 2, 2010, but effective July 1, 2010, as amended by the First Amendment to Ground Lease and Property Use Agreement, dated _____, (as amended, the "Amended Lease") are incorporated by reference into this Memorandum. The Amended Lease is on file with the City Clerk's Office of the City of San José.
2. Premises. The Premises that are the subject of the Amended Lease are as more particularly described in Exhibit A attached hereto.
3. The Amended Lease term commenced on July 1, 2010, and shall terminate at 11:59 pm on June 30, 2065, subject to early termination in accordance with the Amended Lease.
4. The purpose of this Memorandum is to give notice of the existence of the Amended Lease, which itself constitutes the agreement between the parties.