

EXCLUSIVE NEGOTIATIONS AGREEMENT

APN 01531063

This Exclusive Negotiations Agreement ("Agreement") is effective the date fully executed ("Effective Date") by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), the CITY OF SANTA CLARA, a municipal corporation of the State of California ("Santa Clara"), and SANTA CLARA VALLEY WATER DISTRICT, a California special district ("Valley Water"). City, Santa Clara, and Valley Water are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

A. WHEREAS, City is the owner of certain real property located at the east side of Zanker Road, north of State Route 237 (APN 01531063) in the City of San José, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Property");

B. WHEREAS, City and Santa Clara are the owners of the San Jose/Santa Clara Water Pollution Control Plant (collectively "Owners");

C. WHEREAS, City is the administering agency for the management of the San Jose/Santa Clara Water Pollution Control Plant lands, including for the Property;

D. WHEREAS, Valley Water proposes to construct and operate a full-scale direct potable reuse ("DPR") facility project known as "Pure Water Silicon Valley" ("Project") on a portion of the Property as shown on Exhibit A; and

E. WHEREAS, Owners desire to offer Valley Water the opportunity to exclusively negotiate with the Owners to construct and operate the Project on the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Parties hereby agree as follows:

1. Good Faith Negotiations. Subject to the terms and conditions of this Agreement, Owners and Valley Water shall work diligently and in good faith to negotiate and jointly prepare the agreements required to construct and operate the proposed Project on the Property (collectively, the "Project Agreements"), including, but not limited to, (a) an option agreement for ground lease and property use agreement, (b) a ground lease and property use agreement, and (c) one or more agreements that address source water, reverse osmosis concentrate, and operations and maintenance of the Project. During the Term of this Agreement, Owners agree not to solicit offers or proposals or negotiate with any other person or entity regarding the development of the Property. It is expressly understood and agreed by the Parties that this Agreement does not convey any

interest in the Property or constitute any approval whatsoever of any project, including the proposed Project. By its execution of this Agreement, the Owners are not committing to or agreeing to undertake (a) any disposition of land to Valley Water; or (b) any other acts requiring the subsequent independent exercise of discretion by the City, or its departments. It is further agreed and understood that this Agreement does not imply any obligation on the part of Owners nor Valley Water to enter into the Project Agreements or any agreement that may result from the negotiations contemplated herein.

2. Term of Agreement.

A. The term of this Agreement shall be for a period of three (3) years commencing on the Effective Date of this Agreement and terminating thirty-six (36) months after the Effective Date (“Initial Term”) unless earlier terminated or extended as provided in this Section.

B. The City Manager of the City of San Jose, or the City Manager’s designee, acting on behalf of the Owners, shall have the right to extend the Initial Term of this Agreement in one-year increments up to a maximum of three (3) one-year periods (“Option Period(s)”). The decision to extend the Initial Term or any of the Option Period(s) shall be at the sole and absolute discretion of the City Manager. If City elects to extend the Initial Term or any of the Option Period(s), the City shall notify Valley Water in writing not less than thirty (30) days prior to expiration of the Initial Term or the expiration of the Option Period(s) (“Notice of Extension”) in the form set forth in Exhibit C. The Initial Term and the Option Period(s) of this Agreement shall be collectively referred to as “The Term”.

C. If Valley Water does not comply in a timely and diligent manner with any material obligation of Valley Water under this Agreement, City, at its option, may terminate this Agreement on behalf of the Owners at any time following written notice to Valley Water and failure of Valley Water to cure the breach within a reasonable period of time following receipt of such notice. The City Manager, or the City Manager’s designee, may terminate this Agreement on behalf of the Owners. The termination shall be effective upon Valley Water’s receipt of City’s written notice. If, during the Term, Valley Water determines that it is not feasible for Valley Water to develop the Project, Valley Water shall have the right to terminate this Agreement upon providing written notice to City. Valley Water’s Chief Executive Officer (“CEO”), or the CEO’s designee, may terminate this Agreement on behalf of Valley Water.

3. City Use of Property. Prior to the Parties executing a ground lease and property use agreement for the Project, City is entitled to use the lands designated on Exhibit A for temporary or interim purposes related to the San Jose/Santa Clara Water Pollution Control Plant.

4. Project Milestones. Within the time periods set forth in the Schedule of Performance attached hereto as Exhibit B (“Schedule of Performance”), the Parties shall

have completed the milestones set forth therein. The City Manager is authorized to extend, on behalf of the Owners, the date for the performance of any task listed on Exhibit B.

5. Disclosure of Confidential Information. The Parties are subject to the California Public Records Act ("Act"). The Act generally provides that written documents retained by either Party are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. Each Party shall designate as "Confidential" any information which they provide to the other Party which they desire to keep confidential. If a request for disclosure of any information designated as "Confidential" by either Party is made under the Act, they shall notify the other Party in writing and the other Party shall have the opportunity to object to the release of such information.

6. Valley Water Responsibilities.

A. Development Costs. Valley Water expressly acknowledges that all expenses and costs it may incur during the Term of this Agreement or as a result of this Agreement are its sole obligation and responsibility and done at its sole risk, including, but not limited to, any costs associated with the proposed Project and any costs incurred to prepare the necessary studies and analysis required for any proposed project.

B. California Environmental Quality Act. The California Environmental Quality Act ("CEQA") is applicable to any Project contemplated by this Agreement. Environmental clearance must be obtained prior to obtaining City Council approval of any Project Agreements related to the proposed Project.

7. Owners' Responsibilities.

A. Owners' Assistance and Cooperation. Owners shall cooperate with Valley Water by providing information regarding the Property.

B. Distinction from Regulatory Authority of the Owners. Valley Water understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the Owners, acting as regulatory or permitting authorities, have hereby granted or are obligated to grant any approval or permit required by law for the development of the Project on the Property as contemplated by this Agreement.

C. Public Hearing. If the negotiations contemplated herein culminate in the Project Agreements, the agreements will be brought forward for consideration by the Owners' respective City Councils and Valley Water Board, provided, however, such agreements shall become effective only after having been considered and approved by the Owners' respective City Councils in their sole and absolute discretion following any public hearings or other actions required by law.

8. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To City:

Jeff Provenzano
Director of Environmental Services
City of San José
200 East Santa Clara Street, 10th floor tower
San Jose, CA 95113

To Valley Water:

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

To Santa Clara:

John Ramirez
Director of Water & Sewer Utilities
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served in the manner specified above to the following address:

City of San José
City Attorney's Office
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

A copy of any notice of a legal nature, including, but not limited to, any claims against Valley Water, its officers or employees shall also be served in the manner specified above to the following address:

Santa Clara Valley Water District
Office of District Counsel
5750 Almaden Expressway
San Jose, CA 95118

A copy of any notice of a legal nature, including, but not limited to, any claims against Santa Clara, its officers or employees shall also be served in the manner specified above to the following address:

City of Santa Clara
City Attorney's Office
1500 Warburton Avenue
Santa Clara, CA 95050

9. Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

10. Time of Essence. It is understood and agreed by the Parties that time is of the essence in the performance of the obligations of this Agreement.

11. Assignment. Valley Water may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of City which may be granted or withheld in City's sole and absolute discretion, and any such attempted assignment without the prior written consent of City shall be wholly void and of no effect.

12. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Valley Water and no other person shall have any right of action under this Agreement.

13. Governing Law. The law governing this Agreement shall be that of the State of California.

14. Venue. In the event that suit shall be brought by either party hereunder, the Parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara, or where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

15. Prior Agreements and Amendments. This Agreement, including all Exhibits listed below and attached hereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding between the Parties shall be of any force or effect with respect to those matters covered hereunder.

SAW:WMK

This Agreement may only be modified by a written amendment duly executed by the Parties.

Exhibit A	Description of Property
Exhibit B	Schedule of Performance
Exhibit C	Notice of Exercise of Option to Extend Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

APPROVED AS TO FORM:

CITY OF SAN JOSE

By: _____
Wesley Klimczak
Sr. Deputy City Attorney

By: _____
Toni Taber, MMC
City Clerk

APPROVED AS TO FORM:

CITY OF SANTA CLARA

By: _____
Glen R. Googins
City Attorney

By: _____
Jōvan D. Grogan
City Manager

APPROVED AS TO FORM:

SANTA CLARA VALLEY WATER DISTRICT

By: _____
E. Ray Ruiz
Assistant District Counsel

By: _____
Melanie Richardson, PE
Interim Chief Executive Officer

EXHIBIT A

DESCRIPTION OF PROPERTY

Real property in the City of San Jose, County of Santa Clara, State of CALIFORNIA,
described as follows:

APN: 01531063

Exhibit A

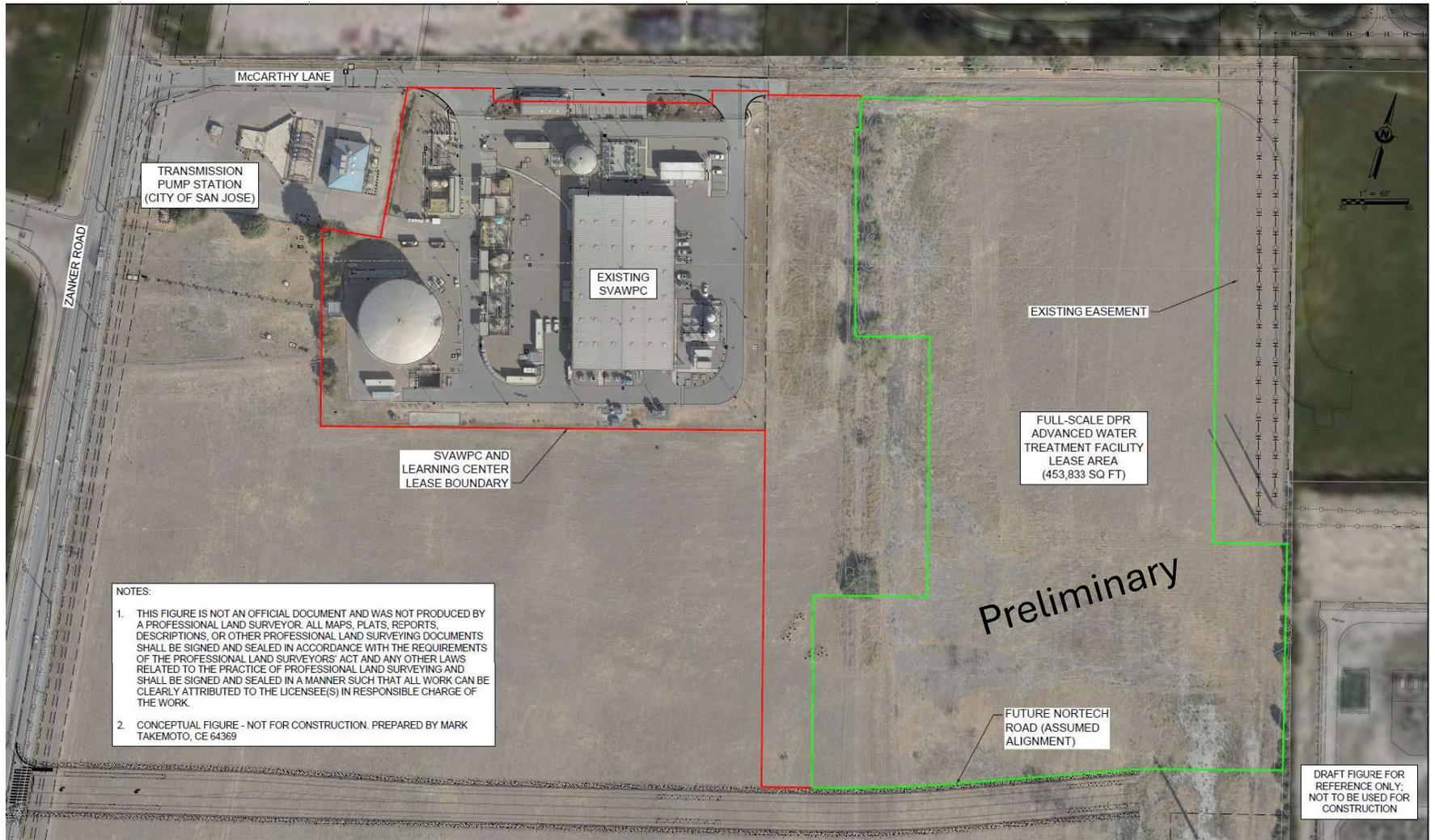


EXHIBIT B

SCHEDULE OF PERFORMANCE

Note:

Whenever this Schedule of Performance requires the submission of plans or other documents at a specified time, such plans or other documents as submitted shall be complete and adequate for review by the City within the time set forth herein. Prior to the time set for each particular submission, Valley Water shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<u>Milestone</u>	<u>Deadline From Effective Date</u>
Valley Water to take necessary actions to include the Project in its capital improvement program.	6 months
Valley Water to Request Private Letter Ruling from Internal Revenue Service that DPR Program, will not, in and of itself, adversely affect the exclusion from gross income of interest on proposed tax-exempt bonds for Federal income tax purposes under the Internal Revenue Code of 1986, as amended.	2 years
City and Valley Water to extend Right of Entry Agreement, dated August 21, 2024, prior to termination of the Right of Entry Agreement on August 21, 2027.	Prior to termination of Right of Entry.
Completion of Option agreement for full scale facility area.	3 years

EXHIBIT C

**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND SANTA CLARA VALLEY WATER
DISTRICT**

WHEREAS, on _____, 2026, the CITY OF SAN JOSE ("City"), the City of Santa Clara ("Santa Clara"), and SANTA CLARA VALLEY WATER DISTRICT ("Valley Water") entered into an Exclusive Negotiations Agreement ("Agreement") which contains an option to extend the Agreement for three (3) additional one-year periods (each an "Option Period"); and

WHEREAS, City has made the determination to extend the Agreement for the first/second/third one-year Option Period;

NOW, THEREFORE,

City hereby exercises on behalf of itself and Santa Clara, pursuant to Section 2(B) of the Agreement, the first/second/third one-year option to extend the term of the Agreement for the period of _____ through _____. All the terms and conditions of the Agreement shall remain in full force and effect during the Option Period.

APPROVED AS TO FORM:

CITY OF SAN JOSE

By: _____

Wesley Klimczak
Sr. Deputy City Attorney

By: _____

Toni Taber
City Clerk