

ATTACHMENT 3

**RECYCLED WATER SUPPLY AND DISTRIBUTION AGREEMENT
BETWEEN
CITY OF SUNNYVALE
AND
SANTA CLARA VALLEY WATER DISTRICT**

This Recycled Water Supply and Distribution Agreement ("Agreement") is made and entered into as of _____ 2014 ("Effective Date"), by and between the City of Sunnyvale ("Sunnyvale"), a municipal corporation of the State of California, and the Santa Clara Valley Water District ("District"), an independent special district located in the State of California, duly organized, existing, and acting pursuant to the laws thereof. Sunnyvale and District may be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Sunnyvale and District are actively involved in efforts to develop recycled water supplies; and

WHEREAS, Sunnyvale and District recognize that sustainable water resource management requires integration of water supply and wastewater management; and

WHEREAS, Sunnyvale and District have a mutual interest in expanding the distribution of recycled water; and

WHEREAS, District's Board of Directors has reaffirmed its commitment to recycled water by passing Resolution 97-60 in support of the expanded use of recycled water in Santa Clara County; and

WHEREAS, the Sunnyvale City Council approved a feasibility study for recycled water expansion; and

WHEREAS, the Parties have entered into a cost sharing agreement on September 24, 2013 to plan and design a recycled water pipeline, booster pump, and related appurtenances on or near Wolfe Road as generally shown in Exhibit A of this Agreement; and

WHEREAS, the Parties intend to enter into another cost sharing agreement to construct the Wolfe Road Recycled Water Facilities Project at or around the same time of entering into this Agreement ("Construction Cost Sharing Agreement"), with construction subject to approval of the District Board of Directors; and

WHEREAS, Sunnyvale's Donald M. Somers Water Pollution Control Plant ("Sunnyvale Plant") is permitted by the State of California San Francisco Bay Regional Water Quality Control Board ("Regional Board") to produce, distribute and use treated effluent as recycled water; and

ATTACHMENT 3

WHEREAS, Recycled water that will be supplied to District by Sunnyvale under the terms of this Agreement is disinfected tertiary recycled water and is produced in compliance with the provisions of Title 22 of the California Code of Regulations and applicable requirements of the California Environmental Protection Agency, State Water Resources Control Board; and

WHEREAS, once the Wolfe Road Recycled Water Facilities Project is constructed and becomes operational, the Parties desire that Sunnyvale supply such disinfected tertiary recycled water to the District at the Wolfe Road Recycled Water Pipeline Point of Connection for distribution to District's customers (including retailer customers); and

WHEREAS, after such recycled water is supplied to the District through the Wolfe Road Recycled Water Pipeline Point of Connection, Sunnyvale is entitled to receive up to 595 acre-feet of such recycled water from the Wolfe Road Recycled Water Pipeline for resale to Sunnyvale's End User customers; and

WHEREAS, in addition to said 595 acre-feet of recycled water, Sunnyvale may request additional Recycled Water, which is subject to District's approval; and

WHEREAS, the Parties desire that the District own, but that Sunnyvale operate and maintain the Wolfe Road Recycled Water Pipeline, District Booster Pump and Meter, appurtenances and other improvements resulting from the Wolfe Road Recycled Water Facilities Project (referred to hereafter collectively as the "Project Improvements"); and

WHEREAS, District will own all Project Improvements except for the Sunnyvale producer meter and service stub-out pipeline downstream of the service stub-out valve; and

WHEREAS, the Parties desire that the Sunnyvale Producer Meter and Service Stub-out pipeline downstream of the Service Stub-out valve be owned and operated by Sunnyvale; and

WHEREAS, the purpose of this Agreement is to define the roles and responsibilities of the Parties with respect to Sunnyvale supplying Recycled Water to the District for distribution through the Wolfe Road Recycled Water Pipeline, and the District providing Recycled Water from Wolfe Road Recycled Water Pipeline to District's customers, including water retailers.

AGREEMENT PROVISIONS

For and in consideration of the foregoing recitals and of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

A. Definitions

When used in this Agreement, the following terms are defined as follows:

1. "End User" means the ultimate user of the Recycled Water that is delivered through the Wolfe Road Recycled Water Pipeline.
2. "Fiscal Year" means each 12-month period during the term of this Agreement commencing July 1st of one year and terminating June 30th of the next succeeding year, both dates inclusive.

ATTACHMENT 3

3. "Recycled Water Retailer" means any entity, public or private, contracting with the District for a supply of Recycled Water for delivery to End Users.
4. "Recycled Water" means disinfected tertiary recycled water that is supplied by Sunnyvale under the terms of this Agreement and conforms to the provisions of Title 22 of the California Code of Regulations and applicable requirements of the State Water Resources Control Board.
5. "Sunnyvale End User Customer Service Line" means a distribution line, including a Service Stub-out Assembly and Sunnyvale End User Customer, that transports Recycled Water from the Wolfe Road Recycled Water Pipeline to a Sunnyvale End User Customer.
6. "Wolfe Road Recycled Water Facilities Project" means a capital construction project that will result in the construction of a recycled water pipeline, booster pump, meter and related appurtenances, which the District is currently planning and designing.
7. "Wolfe Road Recycled Water Pipeline" means the recycled water pipeline that will be constructed as part of the Wolfe Road Recycled Water Facilities Project. This recycled water pipeline will commence at a turnout connection to the Sunnyvale Recycled Water Distribution Pipeline and extend to the Homestead Crossing Recycled Water Pipeline Point of Connection as generally shown in
8. "Service Stub-out Assembly" means the tee-fitting, service stub-out valve, service stub-out pipeline, and blind flange shown in Exhibit B of the Agreement that will be constructed as part of the Wolfe Road Recycled Water Facilities Project at the four (4) locations generally shown in Exhibit A of the Agreement. The service stub-out pipeline for the service stub-out assembly will extend from the Service Stub-out valve to the edge of Wolfe Road as generally shown in Exhibit B of this Agreement
9. "Wolfe Road Recycled Water Pipeline Point of Connection" means a connection of the Wolfe Road Recycled Water Pipeline at the point immediately downstream of the Sunnyvale Producer Meter as generally shown in Exhibit A of this Agreement.

B. Sunnyvale Providing Recycled Water to District for Resale to Recycled Water Retailers

1. Supply of Recycled Water and Service Areas. Sunnyvale, as producer of the Recycled Water, shall supply the District with the Annual Delivery Quantity of Recycled Water, as determined pursuant to Section B(4) below, for a given Fiscal Year to enable the District, as a wholesaler, to distribute Recycled Water to retailers from the Wolfe Road Recycled Water Pipeline. Sunnyvale agrees that District may sell Recycled Water through the Wolfe Road Recycled Water Pipeline to water retailers regardless of whether their service areas are located, in whole or part, within or outside of Sunnyvale's service area.

ATTACHMENT 3

2. Operation of Sunnyvale Plant is Priority. District understands and acknowledges that Sunnyvale is charged with the responsibility to operate its sewage systems in a manner which it determines to be most beneficial to its customers. Nothing contained herein shall be construed to qualify in any manner Sunnyvale's right to operate the Sunnyvale Plant at a level it determines, in its absolute discretion to be appropriate, or to discontinue the operation of the Sunnyvale Plant. Any right of District to Recycled Water pursuant to this Agreement is subordinate to the rights and responsibilities of Sunnyvale as set forth in this Section B(2). Nonetheless, Sunnyvale shall provide the District with at least seventy-two (72) hours prior notice of any planned reduction of the delivery of the Recycled Water to the Wolfe Road Recycled Water Pipeline.
3. Regulatory Permits. Sunnyvale shall maintain a valid National Pollutant Discharge Elimination System permit authorizing the Sunnyvale Plant's discharge of treated wastewater to San Francisco Bay. Sunnyvale shall also maintain a valid water reclamation permit from the Regional Board authorizing the: (i) Sunnyvale Plant to produce the Recycled Water; (ii) distribution of Recycled Water; and (iii) use of Recycled Water by End Users.
4. Annual Delivery Quantity. Within thirty (30) calendar days prior to the District placing the Wolfe Road Recycled Water Pipeline in operation and every three years thereafter, Sunnyvale and District shall meet and confer in good faith to mutually determine the anticipated minimum annual delivery quantity of Recycled Water to be provided to District for distribution to District's customers through the Wolfe Road Recycled Water Pipeline (the "Annual Delivery Quantity") for each of the ensuing three Fiscal Years. District will submit each three-year delivery schedule to Sunnyvale in a form provided by Sunnyvale. Sunnyvale will make every best and reasonable effort to approve the proposed Annual Delivery Quantities set forth in the delivery schedules. Notwithstanding the foregoing, during each Fiscal Year of the term of this Agreement, Sunnyvale shall make available to the District at least 500 acre-feet of Recycled Water for distribution outside of the City of Sunnyvale. In addition, in order to meet the actual demand of Recycle Water customers within Sunnyvale, up to 595 acre-feet of Recycled Water shall be supplied by Sunnyvale for distribution within the City of Sunnyvale.
5. Metering and Measurement of Flows. As generally shown in Exhibit A, as part of the Wolfe Road Recycled Water Facilities Project, the District will construct the Sunnyvale Service Line and Sunnyvale Producer Meter. Upon the District's acceptance of completion of work of the Wolfe Road Recycled Water Facilities Project from the construction contractor, the District shall transfer ownership of the Sunnyvale Service Line and Sunnyvale Producer Meter to Sunnyvale. Upon said assignment, Sunnyvale shall operate and maintain the Sunnyvale Service Line and Sunnyvale Producer Meter and use the Sunnyvale Producer Meter to measure all Recycled Water delivered to the Wolfe Road Recycled Water Pipeline Point of Connection. The Sunnyvale Producer Meter shall govern billings to the District. Sunnyvale shall operate and maintain, at no cost to the District, the Sunnyvale Producer Meter in accordance with industry standards for such meters. Upon written request of the District, Sunnyvale shall provide District with

ATTACHMENT 3

access to the Sunnyvale Producer Meter and its related records for purposes of verifying the quantity of Recycled Water delivered to the Wolfe Road Recycled Water Pipeline Point of Connection and its accuracy in measuring such quantity.

6. Discrepancy between Sunnyvale Producer Meter and District Meter Measurements. The District intends to install a water meter as generally shown by the area identified as District Meter & Booster Pump as generally shown in Exhibit A ("District Meter"). If the difference of Recycled Water measured by the Sunnyvale Producer Meter readings is less than 2% over a calendar quarter billing period, then the Sunnyvale Producer Meter reading shall govern for that calendar quarter billing period. However, if the difference is 2% or greater, then the Parties shall meet and confer to investigate the discrepancy. If the Parties are unable to agree on the actual amount of Recycled Water delivered to the Wolfe Road Recycled Water Pipeline Point of Connection during the calendar quarter billing period, then the Parties may retain a mutually acceptable water metering expert who shall investigate the discrepancy. If either Party's meter is found to be defective, then that Party shall replace or repair that meter.

7. Recycled Water Quality and Pressure. Sunnyvale shall ensure that all Recycled Water delivered to the Wolfe Road Recycled Water Point of Connection be of such quality that the same may be used for all purposes allowed for disinfected tertiary recycled water and that meets or exceeds the quality requirements set forth in the then current disinfected tertiary recycled water quality and monitoring regulations specified in Title 22, Division 4, Chapter 3 (Wastewater Reclamation Criteria) of the California Code of Regulations, as further regulated by the Regional Board, the State Water Resources Control Board and all other federal, state and local agencies having jurisdiction over recycled water quality. Sunnyvale shall maintain a minimum pressure of 65 pounds per square inch at the Wolfe Road Recycled Water Pipeline Point of Connection to satisfy the minimum head requirement for the District Booster Pump. Upon request of the District, Sunnyvale shall provide the District with any Recycled Water quality monitoring data collected by Sunnyvale. Sunnyvale shall also provide the District with reasonable access to sample Recycled Water designated to be delivered to the Wolfe Road Recycled Water Point of Connection.

8. Monitor Recycled Water Quality. Sunnyvale shall monitor the quality of Recycled Water supplied to the District to ensure its compliance with all local, state and federal statutory, regulatory and other legal requirements. The Parties recognize that factors beyond the control of Sunnyvale could cause operational difficulties at the Sunnyvale Plant resulting in the temporary production of Recycled Water that does not meet legal requirements for the intended uses of the End Users. In such cases, Sunnyvale shall immediately suspend deliveries of Recycled Water to the District. Sunnyvale shall use its best efforts to promptly reestablish the production of Recycled Water of a suitable quality and pressure as soon as reasonably possible and shall re-establish District's supply of such Recycled Water accordingly. Sunnyvale shall immediately notify District if the Recycled Water does not meet the then-current applicable regulatory and other legal requirements or if deliveries of recycled water will be suspended. Sunnyvale shall be responsible for providing monitoring reports to District in conformance with the

ATTACHMENT 3

requirements applicable to a "Recycled Water Agency" under Title 22 of the California Code of Regulations and the State Water Resources Control Board. Sunnyvale agrees to accept responsibility for conformance to all other monitoring, reporting, and any other requirements assigned to the "Recycled Water Agency" as defined in Title 22 of the California Code of Regulations and the State Water Resources Control Board.

9. Groundwater Monitoring. The Parties intend to expand the use of recycled water while protecting groundwater resources. If the District, at its sole discretion, determines groundwater monitoring is needed to evaluate potential groundwater impacts from the use of Recycled Water, Sunnyvale agrees to: (i) provide the District with access to Sunnyvale-owned wells and Sunnyvale facilities that produce or distribute Recycled Water to enable the District to collect water quality samples upon the District providing reasonable notice; (ii) facilitate coordination between the District and Sunnyvale End Users who use Recycled Water for irrigation purposes to enable the District to collect samples of the Recycled Water used by such End Users; and (iii) cooperate with the District's efforts to construct new groundwater monitoring wells on Sunnyvale-owned land if reasonably required to adequately monitor groundwater quality.
10. Third Party Beneficiary Rights. California Water Service Company has a third party beneficiary interest in Sections B(7) and B(8) of this Agreement. With respect to its obligations under Sections B(7) and B(8), Sunnyvale shall indemnify California Water Service Company to the same extent that District is indemnified by Section E (MUTUAL INDEMNIFICATION) of this Agreement.
11. Recycled Water Charge For Sunnyvale Water Delivered For Resale by the District. Sunnyvale shall only charge for Recycled Water that is delivered to the Wolfe Road Recycled Water Point of Connection as generally shown in Exhibit A. The wholesale rate in Fiscal Year 2014-15 to provide Recycled Water to the District for resale shall be \$500.40 per acre-foot. Starting in Fiscal Year 2015-16 and every Fiscal Year thereafter, the wholesale rate Sunnyvale charges the District shall increase by 60% of the dollar amount the District increases non-agricultural groundwater rate in Sunnyvale's service area
12. Sunnyvale's Quarterly Recycled Water Billings to District. Within thirty (30) calendar days after each calendar quarter, Sunnyvale shall prepare and provide the District with a quarterly invoice for the total amount of Recycled Water delivered to the Wolfe Road Recycled Water Pipeline Point of Connection for resale by the District during that calendar quarter at the rates set according to Section B(11) above. District shall pay said quarterly invoice within thirty (30) calendar days of its receipt. Notwithstanding the foregoing, District may in good faith assert a bona fide dispute as to all or a portion of amounts specified in a quarterly invoice. If any portion of an amount of the quarterly invoice is subject to such bona fide dispute, then within fifteen (15) calendar days of Sunnyvale's delivery of the quarterly invoice on which a disputed amount appears, District will notify Sunnyvale in writing of the specific items in dispute, and describe in detail District's bona fide reason for disputing each item. The Parties shall then endeavor to resolve the dispute pursuant to the procedure set forth in Section J of this Agreement.

ATTACHMENT 3

13. Right of First Refusal to Purchase Recycled Water. If Sunnyvale receives an offer to purchase Recycled Water from a water retailer or another wholesaler other than the District that Sunnyvale intends to accept (a "Purchase Offer"), Sunnyvale shall provide a copy of that Purchase Offer to District and offer to sell such Recycled Water to District at the price contained in that Purchase Offer. District shall have ninety (90) calendar days after receipt of the offer to agree to purchase the Recycled Water covered by the Purchase Offer at the price set forth therein.

ATTACHMENT 3

C. Sunnyvale Purchase of Recycled Water Delivered by District From Wolfe Road Recycled Water Pipeline

1. Delivery of Recycled Water to Sunnyvale End User Customers. Recycled Water conveyed through the Wolfe Road Recycled Water Pipeline is considered District Recycled Water and may be resold to the District's other customers, including any annual amount over 595 acre feet to Sunnyvale.
2. Construction of Sunnyvale End User Service Line. Sunnyvale may seek permission from the District in the form of a District encroachment permit to connect a Sunnyvale End User Customer Service Line to the Wolfe Road Recycled Water Pipeline. The District agrees to issue up to three (3) encroachment permits (beyond the four service stub-out assemblies already approved and addressed in Exhibit A) subject to reasonable terms and conditions so long as Sunnyvale's total demand for Recycled Water does not exceed 595 AF annually.. Sunnyvale agrees that if said encroachment permits are issued by the District, Sunnyvale shall be responsible for all planning, design, construction, operation, maintenance, and all other costs related to the Sunnyvale End User Customer Service Line. Notwithstanding the foregoing, to the extent Sunnyvale End User Customer Service Line includes a tee-fitting and stub-out valve as shown in Exhibit B, Sunnyvale shall assign ownership of said tee-fitting and stub-out valve to the District who shall thereafter be responsible for their operation and maintenance.
3. Sunnyvale agrees, at no cost to the District, to install, own, operate and maintain a water meter ("Sunnyvale End User Customer Meter") on each service line connected to the Wolfe Road Recycled Water Pipeline that serves Sunnyvale's End User Customers. Sunnyvale shall ensure the Sunnyvale End User Customer Meter is maintained in accordance with water the standards of the manufacturer of the Sunnyvale End User Customer Meter. Upon written request of the District, Sunnyvale shall provide District access to any Sunnyvale End User Customer Meter and its related records for purposes of verifying the quantity of Recycled Water delivered to Sunnyvale's End User customers. Based on the applicable Sunnyvale End User Customer Meter(s), Sunnyvale shall measure Recycled Water delivered to each of its End User customers and report the same to the District on a quarterly basis. This measurement shall govern the District's quarterly billings to Sunnyvale for Recycled Water supplied to Sunnyvale for use by Sunnyvale's End Users.
4. Connection to the Wolfe Road Recycled Water Pipeline. Prior to making any service line connection to the Wolfe Road Recycled Water Pipeline, Sunnyvale must obtain a District encroachment permit for such connection.
5. Recycled Water Delivery Schedules. During each Fiscal Year of the term of this Agreement, the District shall make available for purchase by Sunnyvale at least 595 acre-feet of Recycled Water for delivery to Sunnyvale's End Users. Within thirty (30) calendar days of the date Sunnyvale first seeks to purchase more than 595 acre-feet of Recycled Water for delivery to Sunnyvale's End Users during a Fiscal Year, Sunnyvale shall submit to the District a proposed written schedule for delivery of Recycled Water for the that Fiscal Year. Thereafter, within 60 days

ATTACHMENT 3

prior to each ensuing Fiscal Year, Sunnyvale shall submit to District a proposed written schedule for delivery of Recycled Water for that Fiscal Year. Within fifteen (15) calendar days of receipt of a proposed written schedule for delivery of Recycled Water from Sunnyvale, the District will inform Sunnyvale whether it can satisfy Sunnyvale's delivery request. If the District is unable to satisfy Sunnyvale's delivery request, the Parties shall immediately meet and confer to reach a mutual acceptable Recycled Water delivery schedule.

6. Charge for Recycled Water Delivered by the District Via the Wolfe Road Facilities to Sunnyvale for Resale. The District shall charge for Recycled Water that is delivered to Sunnyvale via the Wolfe Road Recycled Water Pipeline, which is generally shown in Exhibit A. The rate in Fiscal Year 2014-15 to provide Recycled Water to Sunnyvale for resale is \$834.00 per acre foot. Starting in Fiscal Year 2015-16 and every Fiscal Year thereafter, the wholesale Recycled Water rate the District charges Sunnyvale shall increase by the dollar amount the District increases its non-agricultural groundwater rate in Sunnyvale's service area.
7. District's Quarterly Recycled Water Billings to Sunnyvale. Within fifteen (15) calendar days after each calendar quarterly billing period, Sunnyvale shall inform the District in writing of the amount of Recycled Water delivered from the Wolfe Road Recycled Water Pipeline to Sunnyvale's End User customers during that quarterly billing period. District shall invoice Sunnyvale within fifteen (15) calendar days after receiving such water delivery information from Sunnyvale. Sunnyvale shall pay such invoice within twenty (20) calendar days of the invoice date. Alternatively, amounts owed by Sunnyvale may be applied by the District as a credit toward the amount the District owes Sunnyvale pursuant to Section B(11) of this Agreement. Notwithstanding the foregoing, Sunnyvale may in good faith assert a bona fide dispute as to all or a portion of amounts specified in a quarterly invoice. If any portion of an amount of the quarterly invoice is subject to such bona fide dispute, within fifteen (15) calendar days of District's delivery of the quarterly invoice on which a disputed amount appears, Sunnyvale shall notify District in writing of the specific items in dispute, and describe in detail Sunnyvale's bona fide reason for disputing each item. The Parties shall then endeavor to resolve the dispute pursuant to the procedure set forth in Section J of this Agreement.

D. Operation and Maintenance of the Project Improvements

1. Management, Operation, Maintenance and Repair of the Project Improvements. Upon completion of the construction and operational testing of the Project Improvements and the District's acceptance of them from the construction contractor, Sunnyvale shall assume control and responsibility for the management, operation, maintenance and repair of the Project Improvements ("O&M Activities"). Sunnyvale shall perform the O&M Activities in a prudent, reasonable, and efficient manner consistent with applicable industry standards. Sunnyvale agrees to establish reasonable operating procedures and maintenance schedules, and provide all reasonably necessary tools, equipment, materials, supplies and professional, supervisory and managerial personnel necessary to undertake the O&M Activities. Such personnel shall be qualified to

ATTACHMENT 3

perform the duties to which they are assigned. All individuals employed by Sunnyvale undertaking O&M Activities, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Sunnyvale. With respect to labor matters, hiring personnel, employment policies, and all matters related to O&M Activities, Sunnyvale shall comply with all applicable laws. Sunnyvale also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and shall not enter into any contracts with respect to labor matters that purport to bind or otherwise obligate the District.

2. Meetings. Upon at least 10 days prior written notice by either Party, and at least annually before October 31 of each year, the Parties shall meet to discuss matters related to the operation, maintenance, repair or improvement of the Project Improvements, the reconciliation of Recycled Water deliveries, or any other pertinent matter related to this Agreement. Meetings may be held in-person or via any telephonic or electronic means, including telephonic or web conferencing.
3. Reimbursement of O&M Costs. District shall reimburse Sunnyvale for all approved costs Sunnyvale incurs in connection with performing the O&M Activities, including the costs set forth below (collectively, the "Reimbursable Costs"):
 - a. Cost of labor (including Sunnyvale employee, contractor, direct, indirect, and labor overhead costs) to perform the O&M Activities;
 - b. Cost of spare and replacement parts for the Project Improvements;
 - c. Cost of materials necessary to perform the O&M Activities;
 - d. Costs related to training personnel to perform the O&M Activities;
 - e. Consultants' fees and expenses related to performing the O&M Activities approved in advance by District; and
 - f. Contract services fees if approved in advance by District.
4. Quarterly Invoicing for Reimbursable O&M Costs. Within thirty (30) calendar days following the end of each calendar quarter, Sunnyvale shall submit to District an invoice, including receipts and disbursements showing Reimbursable Costs for such calendar quarter. The invoice should also include a summary of the O&M Activities of that calendar quarter. Within thirty (30) calendar days after receipt of any such invoice, District shall pay Sunnyvale the sum specified in such invoice. Notwithstanding the foregoing, District may in good faith assert a bona fide dispute as to all or a portion of amounts specified in the quarterly invoice. If any portion of an amount of the quarterly invoice is subject to such bona fide dispute, within twenty one (21) calendar days of Sunnyvale's delivery of the quarterly invoice on which a disputed amount appears, District will notify Sunnyvale in writing of the specific items in dispute, and describe in detail District's bona fide reason for disputing each item. The Parties shall then

ATTACHMENT 3

endeavor to resolve the dispute pursuant to the procedure set forth in Section J of this Agreement.

5. Records of O&M Activities. Sunnyvale shall keep, maintain, and update all books, papers, plans, drawings, records, accounting records, files, reports and other materials relating to its O&M Activities. Upon receiving at least five (5) calendar days written notice from the District, Sunnyvale shall make those records available to District during Sunnyvale's normal business hours for the purpose of auditing, inspection, or copying.
6. District Right to Assume O&M Activities. Notwithstanding the foregoing, District, at its sole discretion, may assume the O&M Activities from Sunnyvale by providing Sunnyvale with at least sixty (60) calendar days prior written notice. If the District elects to assume the O&M Activities, Sunnyvale acknowledges that District may carry out those O&M Activities with District's own qualified personnel or with contracted qualified personnel.

E. Mutual Indemnification

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

F. Insurance

Sunnyvale agrees to have and maintain the policies set forth in Exhibit C, which is attached hereto and incorporated by this reference, related to its performance of the O&M Activities. Sunnyvale may elect to satisfy its insurance obligations by providing the District with reasonable evidence of its ability to "self insure." As described in Section D(1), Sunnyvale has primary responsibility for the O&M Activities. Sunnyvale shall ensure that it and its contractors acquire and maintain insurance coverages reasonably sufficient to cover potential liability to District (including its directors, officers, employees and agents) arising out of or related to Sunnyvale's O&M Activities.

G. Agreement Term, Expiration and Termination

1. Term and Renewal. This Agreement shall commence on the Effective Date and

ATTACHMENT 3

remain in force for ten (10) years. Following the original ten (10) year term of this Agreement, the Agreement term shall automatically renew and extend for additional five (5) year periods, unless either party provides the other party with at least 90 days written notice of its desire to not renew the term of the Agreement.

2. Default and Termination. Either Party may terminate this Agreement if the other Party materially breaches this Agreement and fails to cure such breach as described below. If either Party becomes aware of a material breach of this Agreement by the other Party, the non-breaching Party shall give the breaching Party notice of such breach. The breaching Party shall then have thirty (30) calendar days from the date of such notice to cure such breach. If the breaching party fails to cure the breach within this thirty (30) day period to the reasonable satisfaction of the non-breaching, then the non-breaching may terminate this Agreement and seek all equitable and legal remedies.

H. Force Majeure

If either Party is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected Party of its obligations under this Agreement ("Force Majeure Event"), the Party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected Party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other Party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses reasonable efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either Party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

I. Notices

1. Unless indicated otherwise herein, all notices, claims, payments, statements or other writing authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or within three (3) business days after mailing, if mailed to the Party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, and properly addressed to the Party as follows:

Any Party may specify a different address, which change shall become effective upon receipt of such notice by the other Party.

ATTACHMENT 3

J. Dispute Resolution

Either Party may give the other Party written notice of any dispute. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between the District's Water Utility Enterprise Chief Operation Officer, and an executive of similar authority to act on behalf of Sunnyvale. Within twenty (20) calendar days after receipt of the notice of dispute, these executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and attempt to resolve the dispute. If the matter has not been resolved within ninety (90) calendar days of the first meeting, either Party may initiate a mediation of the controversy. The Parties shall select one mediator. If they cannot agree on a mediator, the Party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed eight (8) hours, unless the Parties agree to extend said time. The costs of the mediator shall be borne by the Parties equally. Mediation under this Section J is a condition precedent to filing an action in any court. All negotiations and any mediation conducted pursuant to this Section J are confidential and shall be treated as compromise and settlement negotiations to which Sections 1119 and 1152 of the California Evidence Code shall apply, and Sections 1119 And 1152 are incorporated herein by reference. Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

K. Miscellaneous

1. Entire Agreement; Amendment. This Agreement embodies the entire understanding between the Parties pertaining to the subject matter contained in it; supersedes any and all prior negotiations, correspondence, understandings, or agreements of the Parties; and may be waived, altered, amended, modified, or repealed, in whole or in part, only on the written consent of both Parties to this Agreement.
2. No Waiver. No failure or delay on the part of either Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder.
3. Parties Bound. This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successors, and assigns, except that neither this Agreement nor the duties or obligations under this Agreement may be assigned by a Party without the prior written consent of the other Party.
4. Authority. Each individual executing this Agreement on behalf of their respective entity represents and warrants that (i) the individual is duly authorized to execute and deliver this Agreement on behalf of that entity in accordance with the entity's legal authority; and (ii) this Agreement is valid and binding on that entity and enforceable against that entity in accordance with its terms.

ATTACHMENT 3

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any conflict of law provisions thereof.
6. Jurisdiction and Venue. The federal and state courts within County of Santa Clara, California, shall have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement. Each Party expressly consents to the personal jurisdiction of and venue in such courts.
7. Interpretation of Agreement. Each Party was represented by legal counsel in the preparation of this Agreement. Therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.
8. No Third Party Beneficiaries. Except as specified in Section B(7) and B(8) above, this Agreement is entered into only for the benefit of the Parties executing this Agreement and not for the benefit of any other individual, entity, or person.
9. Headings. The titles and headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
11. Severability. All provisions of this Agreement are separate and divisible, and if any part is held invalid, the remaining provisions shall continue in full force and effect.

ATTACHMENT 3

IN WITNESS WHEREOF, SUNNYVALE AND DISTRICT HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR RESPECTIVE DULY AUTHORIZED OFFICERS ON THE EFFECTIVE DATE.

ATTEST:

CITY OF SUNNYVALE

By: _____

By: _____

Name/Title _____

Name/Title _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

SANTA CLARA VALLEY WATER DISTRICT
"District"

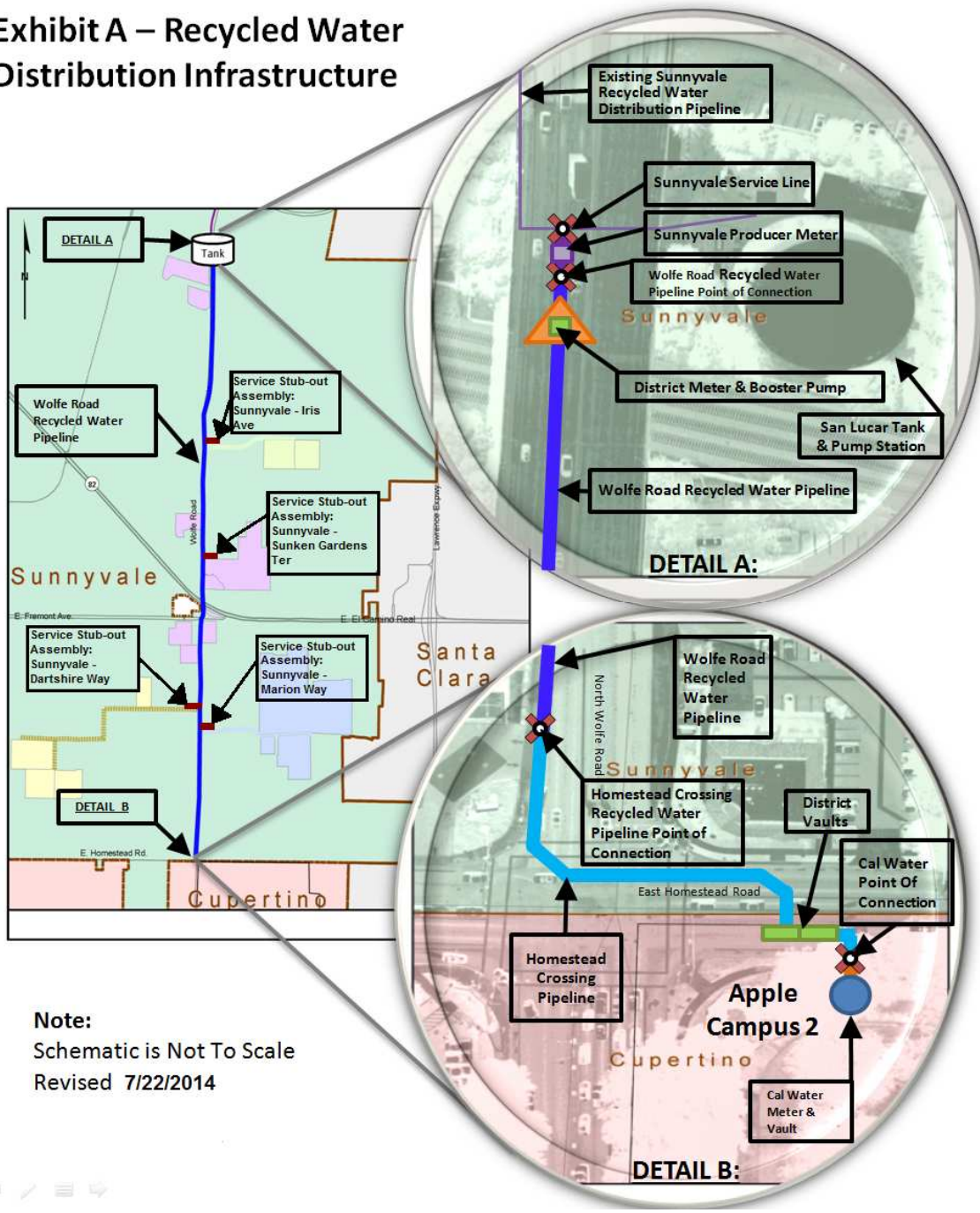
Michele L. King, CMC
Clerk/Board of Directors

By: _____
Tony Estremera
Chair/Board of Directors

APPROVED AS TO FORM:

Anthony T. Fulcher
Senior Assistant District Counsel

Exhibit A – Recycled Water Distribution Infrastructure



Note:
Schematic is Not To Scale
Revised 7/22/2014

**EXHIBIT B – EXPANDED VIEW OF SERVICE STUB-OUT ASSEMBLY
(Not To Scale)**

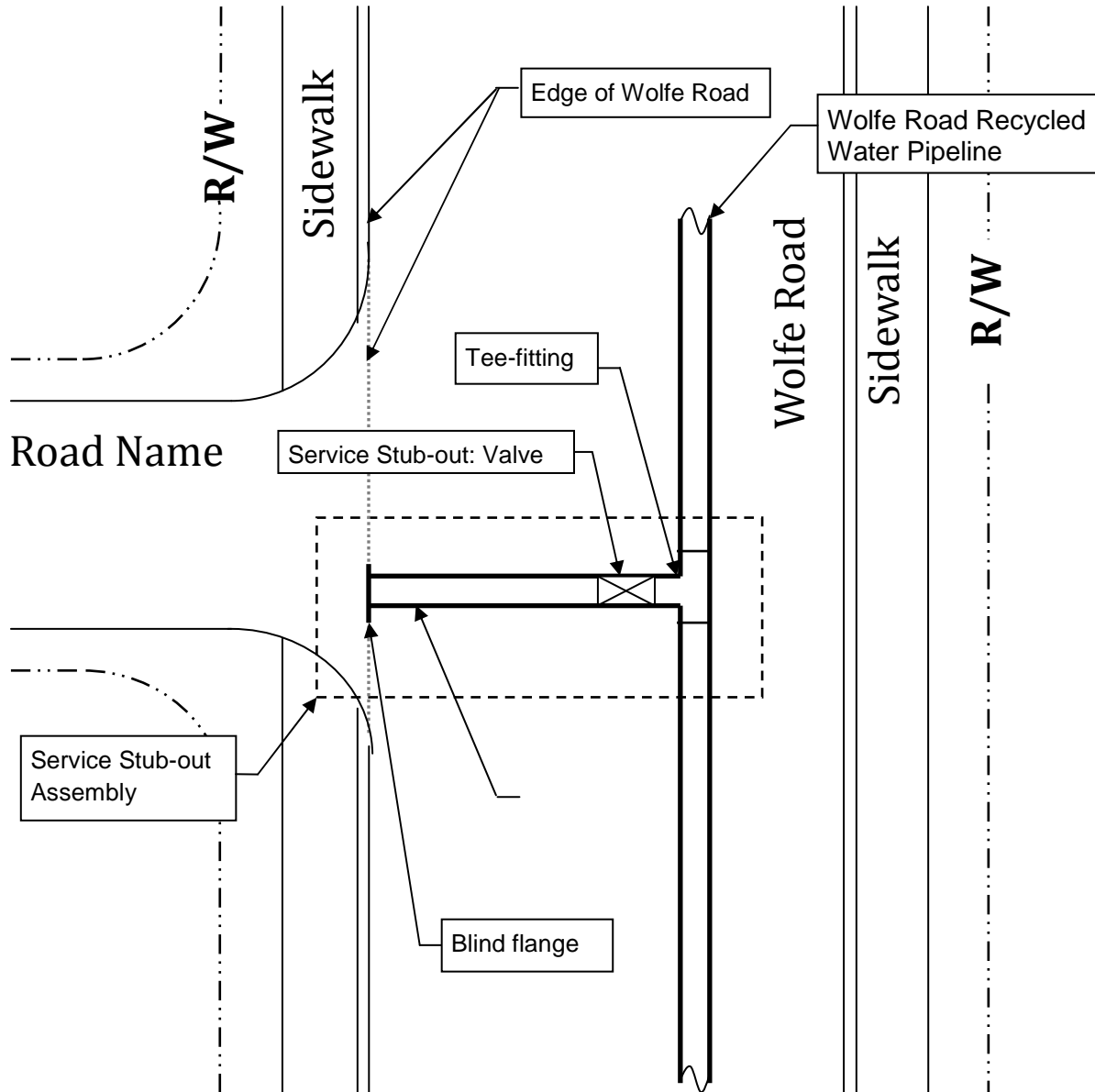


EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Sunnyvale's indemnification of, or liability to, the District, Sunnyvale must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Sunnyvale must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Sunnyvale's insurance agent(s) and/or broker(s), who have been instructed by Sunnyvale to procure the insurance coverage required herein.

In addition to certificates, Sunnyvale must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before the contract commences.** In the event of a claim or dispute, District has the right to require Sunnyvale's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Sunnyvale must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

REQUIRED COVERAGES

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

\$2,000,000 per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

- a. Coverage that is at least as broad as that found in the standard ISO Form CG 00 01.
- b. Contractual Liability expressly including liability assumed under this contract.
- c. If Sunnyvale will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- d. Severability of Interest
- e. Broad Form Property Damage liability

ATTACHMENT 3

- f. If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Sunnyvale's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by District, its Directors, officers, employees, agents or volunteers will be in excess of Sunnyvale's insurance and will not contribute to it.
2. **Business Auto Liability Insurance** with coverage as indicated:

\$2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.
3. **Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

GENERAL REQUIREMENTS

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)** Sunnyvale must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and Sunnyvale will be notified of such requirement(s) by the District.

(NOTE: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable)
2. **Primacy Clause:** Sunnyvale's insurance must be primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss.
3. **Cancellation Clause Revision:** The Certificate of Insurance **MUST** provide **30 days notice of cancellation, (10 days notice for non-payment of premium)**. **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.** The following words must be crossed out or deleted from the standard cancellation clause: "...endeavor to..." AND "...but failure to mail such notice must impose no obligation or liability of any kind upon the company, its agents or representatives."
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key

ATTACHMENT 3

Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.

5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District.. Sunnyvale shall provide the District a letter of self insurance covering the above terms and conditions.
6. **Subcontractors:** Should any of the work under this Agreement be sublet, Sunnyvale must require each of its subcontractors of any tier to carry the aforementioned coverages, or Sunnyvale may insure subcontractors under its own policies.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Sunnyvale for the benefit of the District must not be deemed to release or limit any liability of Sunnyvale. Damages recoverable by the District for any liability of Sunnyvale must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Sunnyvale agrees on to waive subrogation against the District to the extent any loss suffered by Sunnyvale is covered by any Commercial General Liability policy, Automobile policy, or Workers' Compensation policy, described in **Required Coverages** above. Sunnyvale agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
10. **Non-Compliance:** The District reserves the right to withhold payments to Sunnyvale in the event of material noncompliance with the insurance requirements outlined above.
11. **Please mail the certificates and endorsements to:**

**Contract Administrator
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118**

IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the contract.

If your insurance broker has any questions, please advise him/her to call Mr. David Cahen, District Risk Management Administrator, at (408) 630-2213.