

AMENDMENT No. 1 TO NEW MEMORANDUM OF UNDERSTANDING

AMONG THE CITIES OF MOUNTAIN VIEW AND SUNNYVALE RELATING TO THE OPERATION OF A MATERIALS RECOVERY AND TRANSFER STATION

This Amendment No. 1 ("Amendment") to the New Memorandum of Understanding ("MOU") is entered into by and between the CITY OF MOUNTAIN VIEW ("Mountain View") and the CITY OF SUNNYVALE ("Sunnyvale" or "Managing Partner").

RECITALS

- A. Mountain View and Sunnyvale are parties to that New Memorandum of Understanding titled "New Memorandum of Understanding Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery and Transfer Station," dated July 2021 (the "MOU").
- B. Section 14.4 of the MOU provides that the MOU may be amended in writing signed by all Partners and Section 3.4 of the MOU provides for the Partners to meet and confer regarding extensions and the Partners did meet and confer throughout 2025.
- C. The Partners desire to (i) provide Mountain View with a post-term election to either remain a Partner or elect to become a merchant user, (ii) align the MOU's duration with "SMaRT Next Gen Refurbishment" ("NextGen") bonds, anticipated to be issued on or about November 18, 2025, and (iii) provide for Mountain View to make an upfront payment to reduce debt costs and to clarify Mountain View's responsibility for its share of debt service.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Partners agree as follows:

1. Section 2, Definitions, is amended to add Sections 2.33 through 2.35 as follows:

2.33 "Bond Issuance Date" means the date on which the Managing Partner first issues bonds or other long-term financing that funds the design and construction of the Planned Capital Improvements described in Section 4 and Exhibit D of the MOU.

2.34 "Bond Maturity Date" means the principal payment date that is approximately twenty (20) years after the Bond Issuance Date for the Next Gen Refurbishment Capital Project. The Partners anticipate, but do not require, that the Bond Issuance Date will occur on or about November 18, 2025. For the avoidance of doubt, if the Bond Issuance Date is November 18, 2025, the Bond Maturity Date will be November 1, 2045.

2.35 “Post-Term Election” means Mountain View’s election, effective upon the conclusion of the **Base Term**, to either (a) to remain a Partner to the MOU for any extension term agreed by the Partners, or (b) to become a merchant user of the Facility.

2. SECTION 3.4, Meet and Confer On Extension, is amended to read as follows:

No later than December 31, 2035, the Partners shall meet and confer regarding Mountain View’s election articulated in Section 3.6.

3. SECTION 3, Term, is amended to add Section 3.6 as follows.

3.6 Post-Term Election.

3.6(a) After the Base Term, which concludes on December 31, 2036, Mountain View shall have the option to either (1) continue as a Partner and extend the MOU for an additional term that concludes on the same date as the final NextGen bond payment (November 1, 2045); (2) elect to continue as a merchant under Section 9.2 until the final NexGen bond payment, or (3) satisfy Mountain View’s portion of the outstanding principal balance of the NextGen bonds, and any underwriter and legal fees necessary to redeem Mountain View’s portion of the NextGen bonds prior to final maturity. Mountain View shall provide its election decision to Sunnyvale in writing no later than June 30, 2036.

3.6(b) If Mountain View elects to become a merchant pursuant to Section 9.2, any merchant fees paid by Mountain View shall first incorporate the cost of NextGen Bonds payments that are planned to be made after December 31, 2036, just as they would for any other merchant. Sunnyvale shall use the same the methodology to calculate Mountain View's merchant fee, inclusive of NextGen bond payments, as it uses to calculate the merchant fees of Cupertino and other merchant users. ~~Sunnyvale shall determine the merchant fee, inclusive of NextGen bond payments, but this fee shall be set at the same rate as those applied to other merchants Sunnyvale has at that time. Mountain View shall not be charged a higher merchant fee because of the NextGen bond.~~

3.6(c) Nothing in this Section shall be deemed to compel Sunnyvale to seek a call option for its bond issuance. Mountain View’s Post-Term Election does not relieve Mountain View of any obligations accrued prior to the Base Term Date, including payment of its share of fixed costs included in Tip Fees and debt service as provided in Section 4.3 and Section 10.3.

4. Section 4, Planned Capital Improvements, is amended to add Section 4.5 as follows:

4.5 Mountain View Capital Contribution for NextGen Financing

Upon execution of this Amendment, Sunnyvale shall invoice Mountain View for Mountain View’s proportionate share of costs accrued to-date, which the parties reasonably estimate is

\$4,000,000. As soon as practicable after receipt of the invoice, Mountain View shall make a one-time pay-as-you go payment of Four Million Dollars (\$4,000,000) (the “One-Time Contribution”) to be applied by the Managing Partner to complete the NextGen project as soon as practicable upon receipt of the invoice from Sunnyvale. The One-Time Contribution shall be credited solely to Mountain View’s share of the NexGen capital costs. Mountain View’s share of bond issuance, underwriting, and legal fees shall be reduced in the same proportion that \$4,000,000 represents of the NextGen project’s total principal cost in 2025 dollars.

4.5(a) Mountain View Responsibility for Debt Component. The major portion of the NextGen project has been bid as of the date of this Amendment and has a principal cost of \$51.54 million. The following table illustrates the allocation of project costs between Mountain View and Sunnyvale:

Total Costs	\$51,536,006	
State Recycling Grant	-6,575,000	
Net Project Cost	\$44,961,006	
		Share of Net Project Cost
Sunnyvale Project Cost Share (and Bond Funded Project Costs)	\$32,929,441	73.24%
Mountain View Project Cost Share	12,031,565	26.76%
Less Cash Contribution	-4,000,000	
Net Mountain View Share of Bond Funded Project Costs	\$8,031,565	

The second sentence of the paragraph in Exhibit I entitled “Debt Service on the Bonds” is hereby deleted.

4.5(b) Cost Overruns. If Sunnyvale becomes aware of any change in actual or projected costs of the NextGen project that will result in cost escalation above \$51.54 million regardless of cause, including any factors outside the control of the parties such as, but not limited to: seismic activity, fire, flood, tsunami, any natural disaster, labor unrest, labor strike, war, insurrection, civil unrest, foreign or domestic terrorism, riot, embargoes, trade restrictions, pandemic, declaration of any emergency by the United States, declaration of any emergency by the State of California, or declaration of any regional emergency, Sunnyvale shall promptly notify Mountain View in writing and

submit a revised project budget. The parties shall designate staff to meet and confer regarding potential options that can be presented for appropriate approval by the respective City Managers, City Councils, or other appropriate authority as required by each city's respective City Code and Charter. Mountain View shall have no obligation to make payments for the NextGen project over \$51.54 million without such approval. Any costs over \$51.54 million that are not approved by Mountain View will be paid from revenues remaining in the SMaRT Station Fund after the City has paid (1) the costs of operating and maintaining the SMaRT Station for the applicable fiscal year and (2) debt service payable from amounts in the SMaRT Station Fund in the applicable fiscal year.

4.5(c) Following issuance of the bonds, and based on the calculation in Section 4.5(a), Sunnyvale and Mountain View's respective bond payment obligations for each year of the NextGen project will be attached to this Amendment as Exhibit __ of the MOU.

5. Conforming Changes; No Other Amendments.

Except as expressly amended herein, all other terms and conditions of the MOU remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Partners have executed this Amendment as of the dates set forth below.

CITY OF MOUNTAIN VIEW

By: _____
 Name: _____
 Title: _____
 Date: _____

APPROVED AS TO FORM (Mountain View)

By: _____
 Name: _____
 Title: Finance & Administrative Services
 Director
 Date: _____

By: _____
 Name: _____
 Title: City Attorney
 Date: _____

CITY OF SUNNYVALE

By: _____
 Name: _____
 Title: _____
 Date: _____

APPROVED AS TO FORM (Sunnyvale)

By: _____
 Name: _____
 Title: City Attorney
 Date: _____

