

ATTACHMENT 2

WOLFE ROAD RECYCLED WATER FACILITIES PROJECT CONSTRUCTION COST SHARING AGREEMENT BETWEEN CITY OF SUNNYVALE AND THE SANTA CLARA VALLEY WATER DISTRICT

THIS WOLFE ROAD RECYCLED WATER FACILITIES PROJECT CONSTRUCTION COST SHARING AGREEMENT ("Agreement") is made and entered into as of _____ 2014 ("Effective Date"), by and between the City of Sunnyvale, a municipal corporation of the State of California ("Sunnyvale"), and the Santa Clara Valley Water District, an independent special district located in the State of California, duly organized, existing, and acting pursuant to the laws thereof ("District"). Sunnyvale and District may be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, at or around the time of entering into this Agreement, the Parties intend to enter into an agreement for Sunnyvale to provide the District with recycled water from Sunnyvale's Donald M. Somers Water Pollution Control Plant (the "Sunnyvale Plant") by delivering it to the Wolfe Road Recycled Water Pipeline Point of Connection; and

WHEREAS, the Sunnyvale Plant is permitted by the State of California San Francisco Bay Regional Water Quality Control Board ("Regional Board") to produce and distribute recycled water; and

WHEREAS, Sunnyvale has constructed and operates a recycled water distribution system that distributes recycled water to its customers within the City of Sunnyvale, California; and

WHEREAS, the Parties recognize that sustainable water resource management requires integration of water supply and wastewater management; and

WHEREAS, the Parties 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; and

WHEREAS, on September 24, 2013, the Parties entered into a cost sharing agreement to equally share in the cost of the District's efforts to plan and design the Wolfe Road Recycled Water Facilities Project; and

WHEREAS, the Parties now desire to share in the cost of construction of the Wolfe Road Recycled Water Facilities Project; and

WHEREAS, the gross estimated cost to complete the construction phase of the Wolfe Road Recycled Water Facilities Project is \$16,250,000; and

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WHEREAS, the Parties anticipate that \$6,300,000 of said \$16,250,000 estimated cost will be funded from contributions made by Apple Computers, Inc. ("Apple") and California Water Services Company ("Cal Water"), which leaves an estimated funding need of \$9,950,000 to construct the Wolfe Road Recycled Water Facilities Project; and

WHEREAS, the District and Sunnyvale intend to jointly apply for a grant from the California Department of Water Resources' Integrated Regional Water Management Implementation Grant Program seeking \$2,500,000 of funding for the Wolfe Road Recycled Water Facilities Project; and

WHEREAS, the Parties desire that monetary amounts received from said grant, if any, be applied towards said estimated \$9,950,000 remaining funding need; and

WHEREAS, in addition to any funding that may be received from said grant, Sunnyvale desires to contribute up to \$1,475,000 towards the construction phase of the Wolfe Road Recycled Water Facilities Project, which when combined with Sunnyvale's \$625,000 financial commitment specified in the design cost sharing agreement Sunnyvale entered into with the District on September 24, 2013 constitutes a total commitment by Sunnyvale of \$2,100,000 towards the Wolfe Road Recycled Water Facilities Project; and

WHEREAS, the District intends to construct the Wolfe Road Recycled Water Facilities Project only if it receives the monetary contributions from Apple, Inc., Cal Water and Sunnyvale described above, and said construction is approved by the District Board of Directors.

AGREEMENT PROVISIONS

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

A. Purpose of Agreement

The purpose of this Agreement is to secure Sunnyvale's commitment to contribute \$1,475,000 to construct the Wolfe Road Recycled Water Facilities Project. The Agreement also specifies the Parties' efforts to secure grant funding for the construction of the Wolfe Road Recycled Water Facilities Project.

B. Definitions

1. "Eligible Costs" means the District's and Sunnyvale's costs associated with the construction of the Wolfe Road Recycled Water Facilities Project, including without limitation, the costs for materials, supplies, equipment and construction-related labor (including construction, construction project management, construction inspections, construction engineering, encroachment permit issuance, traffic coordination, and community outreach related to the impacts of the construction, legal and administrative services).
2. "Recycled Water" means disinfected tertiary recycled water that is produced at the Sunnyvale Plant and conforms to 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.

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3. "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 Exhibit A of this Agreement.
4. "Wolfe Road Recycled Water Pipeline Point of Connection" means a recycled connection of the Wolfe Road Recycled Water Pipeline at the point immediately downstream of the Sunnyvale Service Line and Sunnyvale Producer Meter as generally shown in Exhibit A of this Agreement.
5. "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.
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, hereafter referred to as "Project".

C. Construction of Wolfe Road Recycled Water Facilities Project

The District is solely responsible for the construction of the Wolfe Road Recycled Water Facilities Project and for all persons or entities engaged in such work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. Construction of the Wolfe Road Recycled Water Facilities Project is contingent upon approval by the District's Board of Directors.

D. Wolfe Road Recycled Water Facilities Project Estimated Cost and Contributions From Apple and Cal Water

As of the Effective Date, the Parties estimate that the total cost to construct the Wolfe Road Recycled Water Facilities Project will be \$16,250,000 of which the Parties anticipate that Apple will contribute \$4,800,000 and Cal Water will contribute \$1,500,000. Notwithstanding anything contained herein to the contrary, the District's obligation to construct the Wolfe Road Recycled Water Facilities Project is specifically contingent upon receiving a contractual commitment of said monetary contributions from Apple and Cal Water, and approval by the District Board of Directors. If the foregoing contingency is not satisfied on or before twelve (12) months from the Effective Date, then the District, at its sole discretion and upon prior written notice to Sunnyvale, may terminate this Agreement.

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E. Applying for Grants

The Parties will work collaboratively to prepare and submit an application seeking a \$2,500,000 grant from the California Department of Water Resources' Integrated Regional Water Management Implementation Grant Program for the Wolfe Road Recycled Water Facilities Project. The Parties further agree to work collaboratively to assess, and, if appropriate, share in the costs to prepare and submit applications for other grants or other outside funding identified after the Effective Date of this Agreement.

F. Sunnyvale's Contribution to Wolfe Road Recycled Water Facilities Project Cost

1. Sunnyvale's Financial Commitment to the District. Subject to the terms and conditions of this Agreement, Sunnyvale shall contribute \$1,475,000 towards the construction of the Wolfe Road Recycled Water Facilities Project.
2. Invoices. The District shall request disbursement of Sunnyvale's \$1,475,000 financial commitment on a reimbursement basis by submitting to Sunnyvale invoices for incurred Eligible Costs. The District shall submit an invoice to Sunnyvale for Eligible Costs no more than once a quarter and include in each invoice the following information:
 - a. An invoice for Eligible Costs not paid from contributions received from Apple and Cal Water that were incurred during the period identified in the particular invoice, including, but not limited to, costs for labor, materials, supplies, legal, engineering, and administrative services associated with the Wolfe Road Recycled Water Facilities Project; and
 - b. A project progress report indicating milestones achieved to date, current timeline for the project completion and anticipated milestones in the coming quarter; and
 - c. The initials of the District's Project Manager, certifying that the invoice being submitted accurately reflects the work performed related to the construction of the Wolfe Road Recycled Water Facilities Project during the period identified in the particular invoice.
3. Disbursements. Following the review and approval of an invoice by Sunnyvale, Sunnyvale shall disburse to the District an approved amount within thirty (30) calendar days after receipt of that invoice. Any and all funds disbursed to the District under this Agreement shall be used solely to pay Eligible Costs not paid from contributions received from Apple or Cal Water.
4. Rejection of Invoices. An invoice may be rejected by Sunnyvale only if:
 - a. it is submitted without signature;
 - b. is submitted under signature of a person other than the District's duly authorized representative;
 - c. the District fails to timely submit final invoices for Eligible Costs within the time period specified in Section F(6) of this Agreement;

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- d. the invoice contains a material error; or
- e. paying the invoice would result in Sunnyvale exceeding its financial commitment described in Section F(1) of this Agreement.

Sunnyvale shall notify the District of any invoice so rejected, and the reasons therefore within 21 calendar days of receiving the invoice.

5. Adjustments to Invoices. If, upon a review of an invoice, Sunnyvale determines that any portion or portions of the costs invoiced: (i) are ineligible to be financed by the terms of this Agreement, (ii) do not constitute costs associated with the construction of the Wolfe Road Recycled Water Facilities Project, or (iii) contain a mathematical error, then Sunnyvale will notify the District of its determination with 21 calendar days of receiving the invoice. If Sunnyvale does not reject the invoice within this 21-day period, it is deemed approved. If the District receives notice of an error to an invoice, it shall, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation or evidence to Sunnyvale substantiating the eligibility or approval of such costs and/or correct the invoice containing a mathematical error. Sunnyvale will adjust the pending invoice by the amount of the ineligible or unapproved cost unless and until such time as the District timely submits additional documentation or evidence to cause Sunnyvale to reverse its determination with respect to any such costs and the District may resubmit any costs subsequently approved on a succeeding invoice. In the case of an invoice rejected due to a mathematical error, the District shall correct such mathematical error and resubmit the invoice.
6. Final Invoice and Disbursements. The District shall submit a final invoice for Eligible Costs no later than six (6) months from the District's acceptance of the Wolfe Road Recycled Water Facilities Project from its contractor. With the final invoice, the District shall provide:
 - a. A statement of full written disclosure of all sources and amounts of funds contributed for Eligible Costs, including contributions received from Apple and Cal Water;
 - b. An accounting of the amounts the District expended towards the construction of the Wolfe Road Recycled Water Facilities Project;
 - c. Certification by the District's duly authorized representative that the data disclosed is true and correct;
 - d. Proof of a recorded notice of completion of the Wolfe Road Recycled Water Facilities Project; and
 - e. The initials of the District Deputy Operating Officer – Water Utility Capital Division, certifying that the final invoice submitted accurately reflects the work performed in constructing the Wolfe Road Recycled Water Facilities Project during the period identified in the final invoice.
7. Eligible Costs Incurred by Sunnyvale. To the extent Sunnyvale incurs Eligible Costs in a calendar quarter during the term of this Agreement, Sunnyvale shall

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prepare and submit to the District an invoice itemizing those costs within thirty (30) days after the end of that calendar quarter. Sunnyvale's invoice must include the initials of Sunnyvale's Environmental Services Director certifying that the itemized costs reflect work related to the construction of the Wolfe Road Recycled Water Facilities Project. Upon receipt of the invoice, the District has twenty-one (21) calendar days to review it. If the District does not object to the invoice within this 21-day period, it is deemed approved. However, if the District does object, then it shall notify Sunnyvale of the reasons why and the Parties shall endeavor to resolve their dispute in the manner specified in Section L of this Agreement. Following review and approval, the District shall disburse the approved amount within thirty (30) calendar days. Such payment to Sunnyvale will become part of the District's Eligible Costs and appear upon subsequent District invoices per Section F(2). Sunnyvale shall submit a final invoice for their Eligible Costs no later than six (6) months from the District's acceptance of the Wolfe Road Recycled Water Facilities Project. Any cost specified in an invoice received after this date will not be considered an Eligible Cost.

8. Audits. Each Party may audit the other Party's records related to its Eligible Costs during normal business hours by providing the other Party with at least five (5) business days notice.

G. Construction of the Wolfe Road Recycled Water Facilities Project

1. Wolfe Road Recycled Water Facilities Project Construction. The Wolfe Road Recycled Water Facilities Project will be constructed pursuant to the plans and specifications developed or caused to be developed by the District. Notwithstanding the foregoing, the District will only proceed with the Wolfe Road Recycled Water Facilities Project if a construction contract is approved and awarded by the District's Board of Directors.
2. Service Stub-out Assemblies. A Service Stub-out Assembly will be constructed at the four locations a generally shown in Exhibit A pursuant to the plans and specifications developed or caused to be developed by the District for the Wolfe Road Recycled Water Facilities Project. Notwithstanding the foregoing, the District will only proceed with the construction of the Service Stub-out Assemblies if a construction contract for the Wolfe Road Recycled Water Facilities Project is approved and awarded by the District's Board of Directors.
3. Performance and Assurances. Upon approval and award of construction contract for the Wolfe Road Recycled Water Facilities Project by the District's Board of Directors, the District shall employ reasonable efforts to faithfully perform or cause to be performed all work related to construction of the Wolfe Road Recycled Water Facilities Project as described in the District approved plans and specifications, or as may be reasonably amended by the District.
4. City of Sunnyvale Permitting and Public Rights-of-Way. Sunnyvale shall facilitate all City of Sunnyvale permitting processes applicable to the construction, operation and maintenance of the Wolfe Road Recycled Water Facilities Project, including, without limitation, rights-of-way, planning, land use, building, and

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inspection permits. All fees relating to Sunnyvale's permitting processes are considered Eligible Costs. Sunnyvale shall provide the District and its contractors with access to public rights-of-way for the construction, operation and maintenance of the Wolfe Road Recycled Water Facilities Project.

5. Easement Rights. Sunnyvale shall dedicate to the District an easement on San Lucar Tank and Pump Station. The District shall prepare a plat and legal description of the easement area that is acceptable to both Parties during the design phase of the Wolfe Road Recycled Water Facilities Project. The term of the easement shall continue through the expiration or termination of the Recycled Water Supply and Distribution Agreement entered into by the Parties on or around the Effective Date of this Agreement.
6. Regulatory Permits. This Agreement is conditioned on obtaining the necessary permits relating to the development, construction, and operation of the Wolfe Road Recycled Water Facilities Project. Each of the Parties undertakes and agrees to separately and jointly, as appropriate, file any and all applications and undertake such proceedings as may be necessary to enable each Party to carry out the undertakings contemplated in this Agreement, and to pursue each application and proceedings in good faith and due diligence. 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: (i) the Sunnyvale Plant to produce the Recycled Water; (ii) the distribution of Recycled Water; and (iv) the use of Recycled Water.
7. Competitive Bidding. All public works contracts greater than \$25,000 related to the construction of the Wolfe Road Recycled Water Facilities Project shall be let by competitive bid procedures that assure award of such contracts to the lowest responsible and responsive bidders. The District does not need approval from Sunnyvale to initiate the bidding process or award a construction contract. The District shall adhere to any applicable state or local laws for competitive bidding and applicable labor laws.
8. Project Management

The District's contact for the Wolfe Road Recycled Water Facilities Project is:

Ms. Katherine Oven
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
(408) 630-3126
KOven@valleywater.org

Sunnyvale's contact for the Wolfe Road Recycled Water Facilities Project is:

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Mr. Mansour Nasser
Water and Sewer Division Manager
City of Sunnyvale
221 Commercial Street
Sunnyvale, CA 94085
(408) 730-7578
mnasser@sunnyvale.ca.gov

The contacts noted above are each responsible for arranging meetings between the Parties regarding the Wolfe Road Recycled Water Facilities Project.

9. Additional Insured for Wolfe Road Recycled Water Facilities Project. The District agrees that for any policy of general liability insurance concerning the construction of the Wolfe Road Recycled Water Facilities Project, the District shall cause, and shall require its contractors and subcontractors to cause, certificates of insurance and endorsements showing Sunnyvale as an additional insured and shall provide Sunnyvale with a copy of such certificates and endorsements prior to the commencement of construction of the Wolfe Road Recycled Water Facilities Project.
10. Disputes With Contractors and Subcontractors. The District shall be solely responsible for resolution of any and all disputes arising out of or related to the District's contracts for construction of the Wolfe Road Recycled Water Facilities Project, including, but not limited to, bid disputes and payment disputes with the District's contractors and subcontractors.
11. Compliance With Laws, Regulations, and Permit Requirements. The District shall at all times comply with, and require its contractors or subcontractors to comply with, all applicable federal and state laws, rules, regulations, permits, and local ordinances, specifically including, but not limited to, environmental, procurements, and safety laws, rules, regulations, permits, and local ordinances.
12. Ownership of the Wolfe Road Pipeline and Appurtenances. District shall be the sole owner of the Wolfe Road Recycled Water Pipeline, booster pump station, appurtenances and all other improvements constructed as part of the Wolfe Road Recycled Water Facilities Project. Notwithstanding the foregoing, as part of the Wolfe Road Recycled Water Facilities Project, the District will also construct the Sunnyvale Service Line and Sunnyvale Producer Meter as generally shown in Exhibit A, and the four (4) Service Stub-out Assemblies as generally shown in Exhibits A and B. Upon the District's acceptance of the Wolfe Road Recycled Water Facilities Project from the construction contractor, the District shall assign ownership of the Stub-out pipeline and blind flange downstream of the Stub-out valve at each of the said four (4) Service Stub-out Assembly locations, the Sunnyvale Service Line, and the Sunnyvale Producer Meter. Upon said assignment, Sunnyvale shall own, operate and maintain the Stub-out pipeline and blind flange downstream of the Stub-out valve at each of the said four (4) Service Stub-out Assembly locations, the Sunnyvale Service Line, and the Sunnyvale Producer Meter.

H. Mutual Indemnification.

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In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but, instead, 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 any work, authority, or jurisdiction delegated to such Party 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 paragraph will survive termination and expiration of this Agreement.

I. Agreement Term, Expiration and Termination

1. Term and Renewal. This Agreement shall commence on the Effective Date and terminate six (6) months after the notice of completion for the Wolfe Road Recycled Water Facilities Project is recorded, unless terminated in accordance with the provisions of Section I(2) or by mutual agreement of the Parties. If no contract is awarded for the construction of the Wolfe Road Recycled Water Facilities Project within five years from the Effective Date of this Agreement, the Agreement is terminated, unless extended by written amendment executed by both parties. Notwithstanding any other provision in this Agreement, Sections H and L shall survive termination or expiration of this 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 fifteen (15) calendar days from the date of such notice to cure such breach. If the breaching Party fails to cure the breach within a fifteen (15) day period to the reasonable satisfaction of the non-breaching Party, then the non-breaching Party may take any of the following actions:
 - a. If the District is in default, then Sunnyvale may declare all or any portion of the amounts it disbursed to District under this Agreement to be an obligation of the District immediately and due and payable to Sunnyvale; or
 - b. If Sunnyvale is in default, then the District may terminate the District's obligation to complete the construction of the Wolfe Road Recycled Water Facilities Project and shall not be required to refund to Sunnyvale any funds Sunnyvale previously disbursed to District under this Agreement.

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3. Remedies. Either Party may pursue any other right or remedy available to it at law, in equity, or otherwise. The Parties agree that any remedy provided in this Agreement is cumulative and may be pursued by either Party concurrently or otherwise, at such time and in such order as that Party may determine in its sole discretion. The enumeration in this Agreement of specific rights or powers will not be construed to limit any general rights or powers or impair either Party's rights with respect to its remedies under this Agreement.

J. Force Majeure

If either Sunnyvale or District 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.

K. Notices

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:

If to Sunnyvale: City of Sunnyvale
 221 Commercial Street
 Sunnyvale, CA 94085
 Attn: Water & Sewer Division Manager

If to the District: Santa Clara Valley Water District
 Attn: Chief Operating Officer, Water Utility Enterprise
 5750 Almaden Expressway
 San Jose, CA 95118
 Telephone: (408) 265-2600

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

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L. 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 Operating 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 L is a condition precedent to filing an action in any court. All negotiations and any mediation conducted pursuant to this Section L 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.

M. 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.

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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. 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.

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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

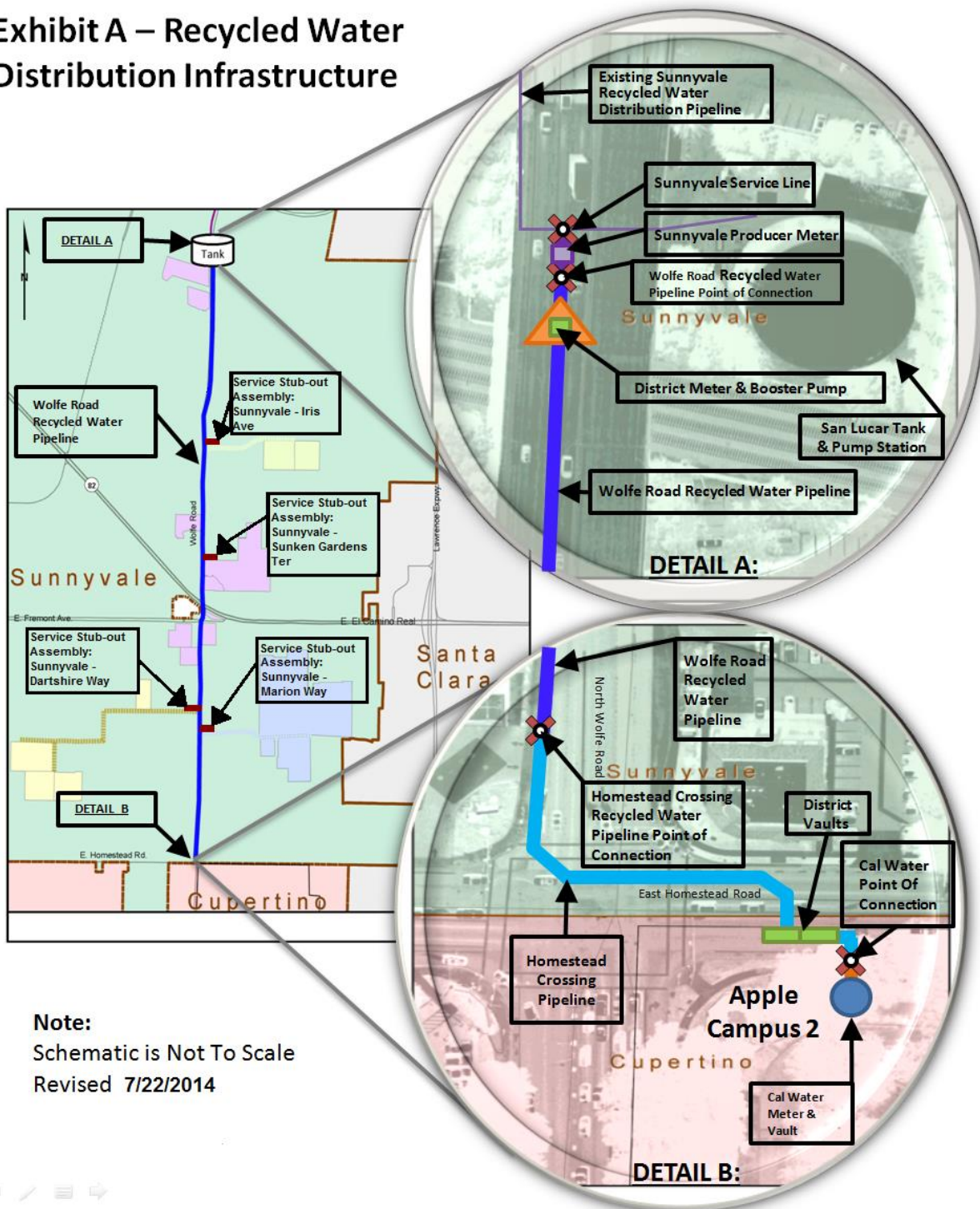
By: _____
Tony Estremera
Chair/Board of Directors

APPROVED AS TO FORM:

Anthony T. Fulcher
Senior Assistant District Counsel

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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)**

