

ADDENDUM NO. ELEVEN TO THE BASIC AGREEMENT BETWEEN THE CITY OF PALO ALTO, THE CITY OF MOUNTAIN VIEW AND THE CITY OF LOS ALTOS FOR THE ACQUISITION, CONSTRUCTION AND MAINTENANCE OF A JOINT SEWER SYSTEM

This Addendum No. Eleven (11) to the Basic Agreement for the Acquisition, Construction and Maintenance of a Joint Sewer System is made and entered into on [DATE], by and among the CITY OF PALO ALTO (“Palo Alto”), the CITY OF MOUNTAIN VIEW (“Mountain View”), and the CITY OF LOS ALTOS (“Los Altos”) (individually, a “Party”, collectively, the “Parties”), all municipal corporations under the laws of the State of California.

RECITALS

A. The Parties have entered into that certain Basic Agreement Between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction, and Maintenance of a Joint Sewer System, executed on October 10, 1968, as amended by the Addenda described below (collectively, the “Basic Agreement”). The Basic Agreement has been amended ten times by addenda, as follows: Addendum No. One (1) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of December 5, 1977; Addendum No. Two (2) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of January 14, 1980; Addendum No. Three (3) to an Agreement By and Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of April 9, 1985; Addendum No. Four (4) to the Agreement By and Between the Cities of Mountain View, Los Altos, and Palo Alto as further amended and dated May 30, 1991; Addendum No. Five (5) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of July 31, 1992; Addendum No. Six (6) to Basic Agreement Between the City of Palo Alto, the City of Mountain View, and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of March 16, 1998; and Addendum No. Seven (7) to Basic Agreement Between the City of Palo Alto, the City of Mountain View, and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of April 15, 2009; Addendum No. Eight (8) to the Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction, and Maintenance of a Joint Sewer System dated as of October 17, 2016; Addendum No. Nine (9) to the Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System dated March 4, 2019; and Addendum No. Ten (10) to the Basic Agreement between the City of Palo Alto, the City of Mountain View, and the City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System dated May 17, 2021 (collectively, the “Addenda”).

B. Palo Alto owns and operates the sanitary sewerage treatment and disposal works and system (the “Joint System”) pursuant to the Basic Agreement, and is responsible for making capital additions to the Joint System. Under the Basic Agreement, any major capital additions for the replacement of obsolete or worn-out units require an agreement by the Parties amending the Basic Agreement.

C. The Parties now desire to increase the maximum amount of financing authorized for the construction of the Primary Sedimentation Tank Project approved by Addendum No. Ten (10) to reflect increases in Project Costs as defined therein, including design engineering, construction management, program management, and construction costs.

D. The Parties further desire to agree to construct a project to improve the Joint System by upgrading the secondary treatment process (biological process) to a process that removes harmful nitrogen by creating anoxic and aerated zones in existing aeration basins. The project will improve final water quality, ensure the Plant continues to meet effluent discharge permit limits, and allow for ultimate decommissioning of the aging biotrickling filters and other aging equipment. The Parties also agree to provide for the sharing of costs associated with this project. The project will become part of the Regional Water Quality Control Plant (the “Plant”), which is owned and operated by Palo Alto as part of the Joint System.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Addendum No. Eleven (11), the Basic Agreement is hereby amended, as follows:

Section 1. Paragraph 41 is hereby added to the Basic Agreement to read, as follows:

“41. MAXIMUM AMOUNT OF FINANCING FOR THE PRIMARY SEDIMENTATION TANK REHABILITATION PROJECT. The maximum amount of financing authorized for the Primary Sedimentation Tank Rehabilitation Project described in Paragraph 40 is increased from \$17.0 million to \$19.4 million.”

Section 2. Paragraph 42 is hereby added to the Basic Agreement to read, as follows:

“42. CONSTRUCTION AND IMPLEMENTATION OF THE SECONDARY TREATMENT UPGRADES PROJECT. Palo Alto, Mountain View, and Los Altos hereby approve the construction of various improvements collectively referred to as the Secondary Treatment Upgrades or “STU” Project. The STU Project includes: new air blowers; air diffusers in aerobic zones; anoxic zone pulsed air equipment; membrane aerated biofilm reactor cassettes; slide and sluice gates and valves to isolate and throttle flows; instruments such as flowmeters and oxygen probes; power distribution equipment including standby diesel generator and power transfer equipment; and return activated sludge piping and pumping. Each Party shall pay its share of the STU Project Costs, in proportion to the capacity it owns in the Joint System or portion thereof as shown in Exhibit “H” to Addendum No. Six (6) to the Basic Agreement. “Project Costs”, as used in this Section 42, means all costs incurred in connection with the construction and implementation of these two Projects. Without limiting the generality of the foregoing, Project Costs shall include, but not be limited to: engineering and other consultants’ fees and costs, including fees incurred pursuant to agreements with engineers, contractors and other consulting, design and construction professionals; deposits, applicable permit fees; all costs to apply for and secure necessary permits from all required regional, state, and federal agencies; plan check fees, and inspection fees; construction costs; initial maintenance; attorneys’ fees and costs; insurance; interest from the date of payment on any contracts.

The Parties authorize Palo Alto to receive State Revolving Fund (“SRF”) loans from the State Water Resources Control Board (“SWRCB”) or pursue other project financing (i.e. utility

revenue bonds) to fund the costs of the Project. The maximum amount of financing for the project is one hundred sixty-nine million dollars and no cents (\$169,000,000).

The SRF loan will have a thirty-year repayment term. The repayments of the SRF loan shall be treated in the same manner as debt services under the Basic Agreement and its Addenda, and repaid by the Parties in the same proportionate shares as shown on Exhibit "H" to Addendum No. Six (6) to the Basic Agreement. The Parties further agree that, if necessary, each Party shall secure the funding necessary for repayment of the SRF loan, operations, and/or maintenance of the Projects, following any appropriate process executed under California Constitution article XIII C and D (Proposition 218).

If the SWRCB terminates its loan commitment unexpectedly following execution of the planning and/or construction contract(s) for the Project, Palo Alto shall notify the Parties promptly. Following notification of the termination of the SRF loan commitment, the Parties shall meet in a timely manner to discuss alternative funding sources and strategies for completion of the Project. If the Parties are unable to agree on new funding sources in a timely manner, then Palo Alto shall have the right to terminate the Project.

The Parties shall remain responsible for Project Costs and loans incurred, whether before or after termination of the Project/Projects, including costs incurred in connection with the termination of Project planning/design/construction contract(s), in the same proportion to each organization's share of Plant capacity, as stated in Exhibit "H" to Addendum No. Six (6) of the Basic Agreement. Total Project Costs shall not exceed the authorized maximum financing amount approved by Parties without prior approval of each Party's governing body. Unless earlier terminated, the obligations and responsibilities of the Parties shall commence with the execution of Addendum No. Eleven (11) to the Basic Agreement and be in force for the term of the SRF loan or other financing.

Mountain View and Los Altos shall pay their respective shares of any Project Costs within thirty (30) business days of receipt of the quarterly billing statement sent by Palo Alto. Palo Alto shall not send more than one invoice in any thirty-day period. If a Party disputes the correctness of an invoice, it shall pay the invoice in full and the dispute shall be resolved after payment in accordance with Section 19 of the Basic Agreement, and shall not offset against any payment due.

Section 3. Except as modified herein, the Basic Agreement shall remain unchanged, and is hereby ratified and confirmed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Addendum as of the date first written above.

