

# MEMORANDUM

**TO: UTILITIES ADVISORY COMMISSION**

**FROM: PUBLIC WORKS DEPARTMENT**

**DATE: FEBRUARY 1, 2017**

1

**SUBJECT: Staff Recommendation that the Utilities Advisory Commission Recommend that the City Council Adopt a Resolution Establishing Pledged Sources of Revenue For Repayment of State Revolving Fund Loans for Wastewater Enterprise Capital Improvement Projects at the Palo Alto Regional Water Quality Control Plant, and Repealing Resolution 9631**

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## **REQUEST**

Staff requests that the Utilities Advisory Commission recommend that the City Council Repeal Resolution No. 9631 (Attachment 3) and replace it with a Resolution (Attachment 1) pledging an additional source of revenue for the repayment of two State Revolving Fund loans from the State Water Resources Control Board: one loan for design and construction of the Regional Water Quality Control Plant sludge dewatering and load-out facility, and one for planning and design of three additional projects: the laboratory/environmental services building, primary sedimentation tank rehabilitation, and fixed film reactor rehabilitation projects.

## **EXECUTIVE SUMMARY**

The State Water Resources Control Board requires the City to pledge revenues from both the City's Wastewater Collection and Treatment funds in order to be eligible for low interest loans from the State for upcoming Wastewater Treatment projects. Staff therefore recommends that Council repeal Resolution 9631, which pledged only Wastewater Treatment fund revenues, and adopt the attached replacement (Attachment A). The City's acceptance of this SWRCB requirement permits SRF loan eligibility and keeps the interest rate at half of what it would otherwise be compared to typical water revenue bonds.

## **BACKGROUND**

The State Water Resources Control Board (SWRCB) administers the State Revolving Fund (SRF) program. The SRF program has a fixed amount of funds available each fiscal year and provides loans to wastewater treatment agencies on a first-come-first-served basis. Under this program, eligible projects can apply for loans with interest rates that are roughly half the rate of the State General Obligation Bonds; the current SRF interest rate is 1.7%. These favorable terms help lower total project costs, minimizing the financial impacts of projects on rate-payers.

On October 17, 2016, Council adopted three resolutions authorizing the City Manager to file applications for SRF loans for construction of the sludge dewatering and truck load out facility (CWSRF Project No. 8190-110) and planning/design of the laboratory/environmental services building, the primary sedimentation tank rehabilitation, and fixed film reactor rehabilitation projects (CWSRF Project No. 8104-110), designating the amount of project expenditures to be reimbursed by SRF proceeds, pledging repayment revenue for the SRF loans, and authorizing amendments with RWQCP Partners to obligate their SRF loan repayment (SR#7144 / Attachment B).

### **DISCUSSION**

Section 603 of the Federal Clean Water Act Amendments requires each financing recipient to establish one or more pledged sources of revenue for SRF assistance. Resolution No. 9631 pledged revenues of the City's Wastewater Treatment enterprise fund for repayment of SRF financing for CWSRF Project No. 8190-110 and CWSRF Project No. 8104-110. After Council's adoption of Resolution No. 9631, and the SWRCB's review of the City's SRF application, the SWRCB determined that the City must also pledge Wastewater Collection revenues for repayment of the SRF loans. The dual pledge of funds has been required on past debts, including SWRCB SRF loans for a 2007 recycled water pipeline project and a 2009 ultraviolet disinfection facility project as well as the City's 1999 bond issuance for RWQCP and storm drain improvements. Therefore, staff proposes that Council adopt a new resolution pledging both funds, and repealing the earlier resolution.

Securing these SRF loans will also allow the City to retire its sludge incinerators, reducing greenhouse gasses dramatically. All of the five Wastewater Treatment Plant's Partner Agencies have executed agreements in which they individually agree to repay the Palo Alto Wastewater Treatment Fund their portion of the State loans, which will be paid annually by the Wastewater Treatment Fund. Pledging of the Wastewater Collection Fund is consistent with the actions taken by the Partner agencies.

### **NEXT STEPS**

Construction Contract Bid Opening	February 2017
SRF Installment Sales Agreement development	February 2017
Palo Alto Council approval of SRF Installment Sales Agreement	March 2017

### **RESOURCE IMPACT**

No new additional funds are associated with the adoption of the substitute resolution. Pledging the Wastewater Collection revenues in addition to Wastewater Treatment revenues is not anticipated to negatively impact the viability of either fund. Loan expenses, which are directly paid by the Wastewater Treatment Fund to the State, have been included in budget planning for each fund. Each of the Wastewater Treatment Plant Partner Agencies has executed agreements in which they agree to repay their portion of the State loans.

The construction loan for the sludge dewatering and truck loadout facility is estimated to be \$27.8 million with an annual debt service payment required for 30 years. Based on an

estimated 1.8% interest rate, the Palo Alto portion of the debt service is estimated at \$0.458 million per year (37.89% share) and the other five partner agencies portion is estimated at \$0.750 million per year (62.11% share). The estimated \$6.75 million planning and design loan for the primary sedimentation tank rehabilitation, fixed film reactor rehabilitation, and the environmental services/laboratory building is a 10-year loan that can be refinanced into a 30-year SRF construction loan. Based on an estimated 1.8% interest rate, the Palo Alto portion of the ten-year debt service payment for the planning loan is estimated at \$0.282 million per year (37.89% share) and the other five partner agencies portion is estimated at \$0.462 million per year (62.11% share) for ten years.

#### **POLICY IMPLICATIONS**

Adoption of the resolution does not represent a change in existing policies.


#### **ENVIRONMENTAL REVIEW**

The Commission's recommendation that Council approve a revenue pledge resolution to repay State Revolving Fund financing for the above-referenced Projects does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. Council approved an Initial Study/Mitigated Negative Declaration for the sludge-dewatering and loadout facility project on March 28, 2016 (Staff Report ID# 6424).


#### **ATTACHMENTS**

- A. Resolution 9631: Resolution of the Council of the City of Palo Alto Establishing One or More Pledged Sources of Revenue For Repayment of Funding Pursuant to The Federal Clean Water Act Amendments
- B. Staff Report 7144 Partner Agreements and Resolutions for Sludge Dewatering & Loadout Facility
- C. Adoption of a Resolution Establishing Pledge Sources of Revenue for Repayment of State Revolving Fund (SRF) Loans for Planning, Design and Construction of Wastewater Treatment Enterprise Fund Facilities at the Palo Alto Regional Water Quality Control Plant (RWQCP), and Repealing Resolution No. 9631

**PREPARED BY:**

 **JAMES ALLEN, Manager, Water Quality Control Plant**

**REVIEWED BY:**

 **PHIL BOBEL, Assistant Director of Public Works**  
**Environmental Services Division**

**APPROVED BY:**



**ED SHIKADA**  
Utilities General Manager

NOT YET APPROVED

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Establishing Pledged  
Sources of Revenue For Repayment of Funding Pursuant to the Federal  
Clean Water Act Amendments and Repealing Resolution 9631

RECITALS

A. The CITY OF PALO ALTO (the “City”) desires to finance the costs of planning, design, and/or construction of certain public facilities and improvements relating to its wastewater system, including the planning/design of primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building, and the construction of a sludge treatment and load-out facility (the “Projects”) that were identified in the Regional Water Quality Control Plant’s Long Range Facility Plan.

B. The City intends to finance the planning, design, and/or construction of the Projects or portions of the Projects with moneys (“Project Funds”) provided by the State of California, acting by and through the State Water Resources Control Board (the “Water Board”).

C. Section 603(d)(1)(C) of the Federal Clean Water Act Amendments require each financing recipient to establish one or more pledged sources of revenue for Clean Water State Revolving fund (CWSRF) financial assistance.

D. Revenue will be considered pledged when the City passes a resolution committing a source of funds for repayment.

E. On October 17, 2016 the City Council adopted Resolution No. 9631, pledging revenues of its Wastewater Treatment enterprise fund to repayment of Clean Water State Revolving Fund financial assistance incurred for the planning, design, and/or construction of the Projects, and, in response to additional direction from the Water Board, now wishes to repeal Resolution No. 9631 and adopt this Resolution, in order to pledge revenue from both its Wastewater Treatment and Wastewater Collection enterprise funds to repayment of Clean Water State Revolving Fund financial assistance for the Projects.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The City of Palo Alto hereby pledges Net Revenues of its Wastewater Treatment enterprise fund and Wastewater Collection enterprise fund to repayment of any and all Clean Water State Revolving Fund financing incurred for CWSRF Project No. 8104, including the planning/design of primary sedimentation tanks, fixed film reactors, and laboratory/environmental service building and CWSRF Project No. 8091-110, including the design and construction of a sludge dewatering and load-out facility. Net Revenues of the City’s Wastewater Treatment enterprise and Wastewater Collection enterprise are defined as follows:

## NOT YET APPROVED

"Net Revenues" means, with respect to the Wastewater Treatment enterprise and Wastewater Collection enterprise, for any period of computation, the amount of the Gross Revenues received from the Wastewater Treatment enterprise and Wastewater Collection enterprise during such period, less the amount of Maintenance and Operation Costs of the Wastewater Treatment enterprise and Wastewater Collection enterprise becoming payable during such period.

"Gross Revenues" means, for any period of computation, all gross charges received for, and all other gross income and revenues derived by the City from, the ownership or operation of the Wastewater Treatment enterprise and Wastewater Collection enterprise or otherwise arising from the Wastewater Treatment enterprise and Wastewater Collection enterprise during such period, including but not limited to (a) all Charges received by the City for use of the Wastewater Treatment enterprise and Wastewater Collection enterprise, (b) all receipts derived from the investment of funds, (c) transfers from (but exclusive of any transfers to) any stabilization reserve funds, and (d) all moneys received by the City from other public entities whose inhabitants are served pursuant to contracts with the City.

"Maintenance and Operation Costs" means the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Wastewater Treatment enterprise and Wastewater Collection enterprise, calculated in accordance with sound accounting principles, including the cost of supply of water, gas and electric energy under contracts or otherwise, the funding of reasonable reserves, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Wastewater Treatment enterprise and Wastewater Collection enterprise in good repair and working order, and including all reasonable and necessary administrative costs of the City attributable to the Wastewater Treatment enterprise and Wastewater Collection enterprise and, any financing instruments incurred to finance improvements to the Wastewater Treatment enterprise and Wastewater Collection enterprise, such as salaries and wages and the necessary contribution to retirement of employees, overhead, insurance, taxes (if any), expenses, compensation and indemnification of any bond trustee or other lender, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of any financing instrument related to the Wastewater Treatment enterprise and Wastewater Collection enterprise, but excluding depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

"Charges" means fees, tolls, assessments, rates and rentals prescribed under applicable law by the City Council for the services and facilities of the Wastewater Treatment enterprise and Wastewater Collection enterprise.

## NOT YET APPROVED

This pledged source of revenue shall remain in effect until such financing is fully discharged unless modification or change of such dedication is approved in writing by the State Water Resources Control Board.

SECTION 2: The Council's pledge of the revenues to repay State Revolving Fund financing for the above-referenced Projects does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. Council approved an Initial Study/Mitigated Negative Declaration for the sludge-dewatering and loadout facility project on March 28, 2016 (Staff Report ID# 6424).

SECTION 3: Resolution No. 9631, adopted on October 17, 2016, is hereby repealed.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Administrative Services



**City of Palo Alto**  
**City Council Staff Report**

**(ID # 7144)**

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**Report Type: Consent Calendar**

**Meeting Date: 10/17/2016**

**Summary Title: Partner Agreements and Resolutions for Sludge Dewatering & Loadout Facility**

**Title: Adoption of Three Resolutions to Execute State Revolving Fund (SRF) Financial Assistance Applications, Designate the Amount of Project Expenditures to be Reimbursed by SRF Proceeds, and Pledge Revenue for Repayment of SRF Loans; Amend the 2009 SRF Assistance Agreement; and Authorize Contract Amendments with RWQCP Partners Mountain View and Los Altos, East Palo Alto Sanitary District, and the Board of Trustees of the Leland Stanford Junior University for the Funding of the Sludge Dewatering and Load Out Facility, the Primary Sedimentation Tank Rehabilitation, the Fixed Film Reactor Rehabilitation, and the Laboratory Environmental Services Building for the Wastewater Treatment Enterprise Fund Facilities at the Palo Alto Regional Water Quality Control Plant (RWQCP)**

**From: City Manager**

**Lead Department: Public Works**

**Recommendation**

Staff recommends that Council

1. Adopt a Resolution (Attachment A) authorizing the City Manager or his designee to execute State Revolving Fund Financial Assistance Applications from the State Water Resources Control Board (SWRCB) on behalf of the Palo Alto Regional Water Quality Control Plant (RWQCP) for the planning, design, and construction of projects identified in the RWQCP's Long Range Facility Plan;
2. Adopt a Resolution (Attachment B) designating the amount of sludge dewatering and loadout facility project expenditures to be reimbursed by proceeds from the State Revolving Fund;
3. Adopt a Resolution (Attachment C) pledging a dedicated source of revenue for the repayment of two State Revolving Fund loans from the SWRCB: one

- for the construction of the sludge treatment facility, and one for the planning of three additional projects: the laboratory/environmental services building, the primary sedimentation tank rehabilitation, and fixed film reactor rehabilitation projects;
4. Amend the City's existing 2009 State Revolving Fund Financial Assistance Agreement to be Subordinate to 1995 and 1999 Utility Revenue Bonds, and on parity with the City's 2007 SRF loan (Attachment D); and
  5. Authorize the City Manager or his designee to execute the following contract amendments with the RWQCP partners for the construction of the sludge dewatering facility:
    - a. Addendum No. 8 to the Basic Agreement with the cities of Mountain View and Los Altos (Attachment E);
    - b. Amendment No. 6 to Agreement No. C237 with East Palo Alto Sanitary District (Attachment F); and
    - c. Amendment No. 4 to Agreement No. C869 with the Board of Trustees of the Leland Stanford Junior University (Attachment G).

### **Executive Summary**

A facility to replace the sewage sludge ("biosolids") incinerators at the [Regional Water Quality Control Plant \(RWQCP\)](#) has been designed (Capital Improvement Program (CIP) project WQ-14001) and Council is being asked to approve the application for a low interest loan from the State Water Resources Control Board for construction. The facility will dewater the biosolids and allow it to be loaded onto trucks and taken offsite for further treatment, until further treatment units can be built onsite. The type of further treatment has not been decided, and could be anaerobic digestion, gasification, or another technology.

Council is also being asked to approve the application for a second low interest loan from the state to conduct planning for the next three major projects, collectively referred to as Projects, the laboratory/environmental services building, the primary sedimentation tank rehabilitation, and fixed film reactor rehabilitation (CIP projects WQ-14002, WQ-14003, and WQ-14004, respectively). To finalize the applications, Council authorization of several resolutions is required.

### **Background**

The [RWQCP](#), originally constructed in 1934, has undergone several expansions



and upgrades. The RWQCP is now an advanced (tertiary treatment) facility that provides treatment and disposal of wastewater for Palo Alto, Mountain View, Los Altos, Los Altos Hills, East Palo Alto Sanitary District, and Stanford University. A [Long Range Facilities Plan \(LRFP\)](#) was prepared in 2012 to provide a plan for future capital projects. A [Biosolids Facility Plan \(BFP\)](#) was completed in 2014 to map the management of biosolids when the sewage sludge incinerators are decommissioned.

#### *State Revolving Fund Program*

The State Water Resources Control Board (SWRCB), Division of Financial Assistance administers the [Clean Water State Revolving Fund \(SRF\)](#) program. The SRF program has a fixed amount of funds available each year and provides loans to agencies on a first-come-first-served basis primarily for construction of wastewater treatment projects. The program's low interest rates, roughly half of the State General Obligation Rate and currently 1.7%, and other favorable terms help lower total project costs, maximizing benefits to rate-payers and partner agencies.

Previously the City obtained SRF loans for the Ultraviolet Disinfection Facility (\$8.5 million, 20-year term) and Palo Alto/Mountain View recycled water pipeline project (\$9.0 million, 20-year term).

#### *Sludge Dewatering and Truck Loadout Facility Project*

Council directed staff in May 2014 to initiate the design of the sludge dewatering and truck loadout facility [\(CMR ID# 4744\)](#). Council approved a contract with CH2MHILL Engineers in January 2015 to provide design and environmental consulting services for the sludge dewatering and truck loadout facility to be located at the RWQCP [\(CMR ID# 5295\)](#). Component One of BFP is a new sludge dewatering and truck loadout facility, which will allow the retirement of the City's two sewage sludge incinerators. The facility will be used to load trucks with dewatered sludge to be hauled to a regional facility outside of Palo Alto for further treatment, such as composting, gasification and/or anaerobic digestion. Staff will return to Council for approval of the sludge hauling contract and identification of final treatment/disposal location(s) after commencement of facility construction, closer to the anticipated date of the sludge dewatering facility startup in early 2020.

In March 2016, Council approved the [Mitigated Negative Declaration](#), the Mitigation and Monitoring Program, and the Record of Land Use approving the Site and Design Review and Architectural Review application for the new dewatering facility at RWQCP ([CMR ID# 6424](#)).

## **Discussion**

Staff has submitted two draft applications to the SWRCB for SRF financing including an application for 1) construction of the sludge dewatering and truck loadout facility (CIP project WQ-14001) and 2) planning/design of the primary sedimentation tank rehabilitation, fixed film reactor rehabilitation, and the laboratory/environmental services building (CIP projects WQ-14002, WQ-14003, and WQ-14004), (all four collectively referred to as the Projects). Each of these Projects is further described in the LRFP. To finalize the applications, Council authorization of several resolutions is required.

Staff is pursuing two SRF loans: one for the planning, design, construction, and construction management of the sludge dewatering and loadout facility, estimated at \$30 million, and one for the planning/design of the primary sedimentation tank rehabilitation, fixed film reactor rehabilitation, and the laboratory/environmental services building projects, estimated at \$6.75 million. The RWQCP partner agencies (Mountain View, Los Altos, East Palo Alto Sanitary District, and Stanford University) have already approved the Projects, pursuit of the SRF loans to fund the Projects, and agreed to repay their share of financial obligations. City of Palo Alto has final approval of the Projects and loans as the lead agency and SRF loan applicant. Staff will return to Council for approval of the (a) final SRF loans, (b) sludge dewatering construction contract, and (c) sludge dewatering construction management contract.

Several steps in the loan process will require Council action, including approval of the final loan amounts, and staff will return to Council accordingly. The items currently brought for Council approval are:

1. Adoption of Authorizing Resolution (Attachment A)

Authorizing the City Manager or his designee to apply for SRF loans for capital improvement projects identified in the Long Range Facility Plan. While initially staff plans to apply for two SRF loans, one to fund the sludge dewatering construction project and one to fund planning of the sedimentation tank

rehabilitation, fixed film reactor rehabilitation, and laboratory/environmental sciences building, the resolution is drafted to authorize the City's application for any of the capital improvement projects listed in the LRFP. The resolution also authorizes the City Manager or his designee, the Director of Public Works or the Manager of the Water Quality Control Plant, to execute SRF financial assistance agreements and any amendments with the SWRCB. SRF applications will be submitted after Council approval of a funding strategy and final construction contract for the relevant facilities.

2. Adoption of Reimbursement Resolution (Attachment B)

The SRF program requires the City to pay in advance for certain tasks such as planning and design (eligible allowances) to be reimbursed by the SRF loan. Through the Reimbursement Resolution, Council will designate a maximum of \$30 million in advance funding for expenditures for the sludge dewatering project. Staff anticipates returning to Council at a later date with any reimbursement resolutions required for the other three projects.

3. Adoption of Pledged Sources of Revenue Resolution (Attachment C)

Section 603 of the Federal Clean Water Act requires each financing recipient to establish one or more pledged sources of revenue to be eligible for SRF assistance. The City will pledge the Net Revenues of its Wastewater Treatment enterprise fund for both SRF loans being sought this year. In compliance with existing bond covenants and the requirements of Proposition 218, the revenue pledge for both new SRF loans will be subordinate to the 1995 Storm Drain and Water Enterprise Bonds, the 1999 Storm Drain, Wastewater Collection and Treatment Bonds, the 2007 SRF loan for the Mountain View/Moffett Area Reclaimed Water Pipeline Project and the 2009 SRF loan for the Ultraviolet Disinfection Project.

4. Amend the 2009 SRF Financial Assistance Agreement (Attachment D)

The City's bond counsel advised that the City's existing 2009 SRF Financial Assistance Agreement be amended so the City's pledge of revenues as security for its 2009 SRF repayment obligation is subordinate to the City's 1995 and 1999 Utility Revenue Bonds, and on parity with the City's 2007 SRF loan. SWRCB agreed to this modification in concept. The City's bond counsel has drafted the attached Amendment No. 1 to the City's 2009 SRF Financial

Assistance Agreement and the City is awaiting feedback from SWRCB's legal department.

5. Approval of Changes to Partner Agencies' Agreements (Attachments E, F & G)

Except for Los Altos Hills, partner agencies are required to approve the Projects and promise to repay the SRF loans which will finance each Project's planning and construction. The City prepared amendments were made to each of the partner agency's relevant agreement, which each agency approved on the dates listed below.

Mountain View City Council	October 13, 2015
Stanford University	January 25, 2016
Los Altos City Council	February 23, 2016
Board of East Palo Alto Sanitary District Board	September 22, 2016

The Addendum and Amendments document the partner agencies' approval of the Projects and establish the partner agencies' acceptance of, and responsibilities for, the terms and conditions of SRF Financial Assistance Agreements and Project costs.

## Timeline

Palo Alto Council approval of SRF Application Submittal, Reimbursement and Revenue Pledge Resolutions*	October 17, 2016
Palo Alto Council approval of Sludge Dewatering Construction Contract and SRF Construction Loan	January 2017
Construction Notice To Proceed	February 2017
Sludge Dewatering Project completion	February 2019

\* If approved, staff anticipates bringing the SRF loan agreement for the three planning projects to Council in 2017

## Resource Impact

No financial impacts are associated with the adoption of the resolutions, amendment of the 2009 SRF loan or approval of the Partner Agreement addendum and amendments.

Applying for SRF funds does not obligate the City to proceed with the Projects. The resource impact of proceeding with Projects will be evaluated at the time Council approval for each Project is requested.

Funding for the design and environmental consulting services for the dewatering facility was in the Wastewater Treatment Fund CIP project WQ-80021 and the fund reserve will be reimbursed with the SRF loan principal.

Repayment of the sludge dewatering 30-year SRF loan is expected to begin in 2020, a year after construction completion, and would be included as an expense in the Fiscal Year 2020 Wastewater Treatment Fund operating budget. Approximately 62% of the fund's operating expenses are offset by revenue from the RWQCP partner agencies.

### **Policy Implications**

Adoption of the resolutions, amendment of the 2009 SRF loan and approval of the addendum and amendments to the partner agencies' agreements do not represent a change in existing policies.

### **Environmental Review**

The City of Palo Alto performed an environmental review for the sludge dewatering and loadout facility under provisions of the California Environmental Quality Act (CEQA). An Initial Study/Mitigated Negative Declaration was prepared for the project and approved by Council on March 28, 2016 ([CMR ID# 6424](#)).

Adoption of the SRF application and funding resolutions, amendment of the 2009 SRF agreement and approval of the addendum and amendments to the partner agencies' agreements are not actions that require CEQA review. These actions do not meet the definition of a project for the purposes of CEQA, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because they are administrative governmental activities which will not cause a direct or indirect physical change in the environment.

#### **Attachments:**

- Attachment A: Resolution Authorizing FINAL(PDF)
- Attachment B: Resolution Reimbursement (PDF)
- Attachment C: Resolution Pledged Revenue (PDF)
- Attachment D: Amendment 1 2009 SRF Loan Agreement (DOCX)

- Attachment E: Amendment 8 Palo Alto--Mountain View--Los Altos (PDF)
- Attachment F: Amendment 6 EPASD(PDF)
- Attachment G: Amendment 4 Stanford University (DOCX)

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Approving the  
City's Submittal of a Financial Assistance Application to the State Water  
Resources Control Board for Capital Improvement Projects Applicable  
to the Regional Water Quality Control Plant

R E C I T A L S

A. The State of California State Water Resources Control Board (the "Board") has a funding program entitled "Clean Water State Revolving Fund," and pursuant to this program, the Board makes funds available for various capital water-related projects.

B. The City of Palo Alto (the "City") owns and operates the Regional Water Quality Control Plant (the "Plant"), and engages in various capital improvement projects to improve and maintain the Plant.

C. The City wishes to apply for State Revolving Fund funds to cover the cost of certain capital improvement projects identified in the attached Long Range Facility Plan, Exhibit A.

D. The first State Revolving Fund application the City submits will cover the sludge dewatering and load-out facility construction project. City staff anticipates seeking multiple State Revolving Fund applications for other capital improvement projects identified in the Long Range Facility Plan, under the authority granted by Council via this resolution.

The Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby finds that it is in the City and the public's interest in the health, safety and welfare of the community to file Financial Assistance Application(s) with the Board to seek funds made available under the State Revolving Fund for any of the CIP projects listed in Exhibit A.

SECTION 2. The Council hereby authorizes and directs the City Manager or his designee, the Director of Public Works or the Manager of the Plant, to:

(a) File and sign, for and on behalf of the City of Palo Alto, a Financial Assistance Application for a financing agreement from the Board for the planning, design, and construction of projects identified in the Plant's Long Range Facility Plan, Exhibit A.

(b) Provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the Board and any amendments or changes thereto.

(c) Represent the City in carrying out the City's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the city and compliance with applicable state and federal laws.

NOT YET APPROVED

SECTION 3. The Council finds that the filing of a Financial Assistance Application with the State Water Resources Control Board does not constitute a project requiring California Environmental Quality Act (CEQA) review. This action does not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. An Initial Study/Mitigated Negative Declaration was prepared for the sludge dewatering and loadout facility project and approved by Council on March 28, 2016 (Staff Report ID# 6424). Implementation of the primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building projects is subject to future CEQA analysis.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Administrative Services



Resolution No. \_\_\_\_\_  
Resolution of the Council of the City of Palo Alto Authorizing the Reimbursement  
of Funding for the Regional Water Quality Control Plant Sludge Dewatering and  
Loadout Facility Project from the State Water Resource Control Board

R E C I T A L S

A. The City of Palo Alto (the "City") desires to finance the costs of constructing and/or reconstructing certain public facilities and improvements relating to its water and wastewater system, including certain treatment facilities, pipelines and other infrastructure (the "Project").

B. The City intends to finance the construction and/or reconstruction of the Project or portions of the Project with moneys ("Project Funds") provided by the State of California, acting by and through the State Water Resources Control Board (State Water Board).

C. The State Water Board may fund the Project Funds with proceeds from the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes (the "Obligations").

D. Prior to either the issuance of the Obligations or the approval by the State Water Board of the Project Funds the City has incurred certain capital expenditures (the "Expenditures") with respect to planning and design of the Project from available moneys of the City.

E. The City has determined that those moneys to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary for the State Water Board to reimburse the City for the Expenditures from the proceeds of the Obligations.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

**SECTION 1.** The City hereby states its intention and reasonably expects to reimburse Expenditures paid prior to the issuance of the Obligations or the approval by the State Water Board of the Project Funds.

**SECTION 2.** The reasonably expected maximum principal amount of the Project Funds is \$30,000,000.

**SECTION 3.** This resolution is being adopted no later than 60 days after the date on which the City will expend moneys for the construction portion of the Project costs to be reimbursed with Project Funds.

**SECTION 4.** Each City expenditure will be of a type properly chargeable to a capital account under general federal income tax principles.

NOT YET APPROVED

**SECTION 5.** To the best of our knowledge, the City is not aware of the previous adoption of official intents by the City that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

**SECTION 6.** This resolution is adopted as official intent of the City in order to comply with Treasury Regulation §1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Project costs.

**SECTION 7.** All the recitals in this Resolution are true and correct and this City so finds, determines and represents.

**SECTION 8.** The Council finds that its authorization of funding reimbursement does not constitute a project requiring review under the California Environmental Quality Act (CEQA) or CEQA Guidelines. This action does not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Administrative Services

Resolution No. \_\_\_\_\_  
Resolution of the Council of the City of Palo Alto Establishing One or  
More Pledged Sources of Revenue For Repayment of Funding Pursuant  
to The Federal Clean Water Act Amendments

R E C I T A L S

A. The City of Palo Alto (the "City") desires to finance the costs of planning, design, and/or construction of certain public facilities and improvements relating to its wastewater system, including the planning/design of primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building, and the construction of a sludge treatment and load-out facility (the "Projects") that were identified in the Regional Water Quality Control Plant's Long Range Facility Plan.

B. The City intends to finance the planning, design, and/or construction of the Projects or portions of the Projects with moneys ("Project Funds") provided by the State of California, acting by and through the State Water Resources Control Board (the "Water Boards").

C. Section 603(d)(1)(C) of the Federal Clean Water Act Amendments require each financing recipient to establish one or more pledged sources of revenue for Clean Water State Revolving fund (CWSRF) financial assistance.

D. Revenue will be considered pledged when the City adopts a resolution committing a source of funds for repayment.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The City of Palo Alto hereby pledges Net Revenues of its Wastewater Treatment enterprise fund to repayment of any and all Clean Water State Revolving Fund financing incurred for CWSRF Project No. 8104, including the planning/design of primary sedimentation tanks, fixed film reactors, and a laboratory/environmental service building, and CWSRF Project No. 8091-110, including the design and construction of a sludge dewatering and load-out facility. Net Revenues of the City's Wastewater Treatment enterprise, and other terms relevant to this action, are defined as follows:

"Net Revenues" means, with respect to the Wastewater Treatment enterprise, for any period of computation, the amount of the Gross Revenues received from the Wastewater Treatment enterprise during such period, less the amount of Maintenance and Operation Costs of the Wastewater Treatment enterprise becoming payable during such period.

"Gross Revenues" means, for any period of computation, all gross charges received for, and all other gross income and revenues derived by the City from, the ownership or operation of the Wastewater Treatment enterprise or otherwise arising from the Wastewater Treatment enterprise during such period, including but not limited to (a) all Charges received by

the City for use of the Wastewater Treatment enterprise, (b) all receipts derived from the investment of funds, (c) transfers from (but exclusive of any transfers to) any stabilization reserve funds, and (d) all moneys received by the City from other entities whose customers are served pursuant to contracts between those entities and the City.

"Maintenance and Operation Costs" means the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Wastewater Treatment enterprise, calculated in accordance with sound accounting principles, including the cost of supply of water, gas and electric energy under contracts or otherwise, the funding of reasonable reserves, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Wastewater Treatment enterprise in good repair and working order, and including all reasonable and necessary administrative costs of the City attributable to the Wastewater Treatment enterprise and any financing instruments incurred to finance improvements to the Wastewater Treatment enterprise, such as salaries and wages and the necessary contribution to retirement of employees, overhead, insurance, taxes (if any), expenses, compensation and indemnification of any bond trustee or other lender, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of any financing instrument related to the Wastewater Treatment enterprise, but excluding depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

"Charges" means fees, tolls, assessments, rates and rentals prescribed under applicable law by the City Council for the services and facilities of the Wastewater Treatment enterprise.

This pledged source of revenue shall remain in effect until such financing is fully discharged unless modification or change of such dedication is approved in writing by the State Water Resources Control Board.

SECTION 2: The Council's pledge of the revenues to repay State Revolving Fund financing for the above-referenced projects does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. Council approved an Initial Study/Mitigated Negative Declaration for the sludge-dewatering and loadout facility project on March 28, 2016 (Staff Report ID# 6424).

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NOT YET APPROVED

Implementation of the primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building projects is subject to future CEQA analysis.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

---

City Clerk

---

Mayor

APPROVED AS TO FORM:

APPROVED:

---

Senior Deputy City Attorney

---

City Manager

---

Director of Public Works

---

Director of Administrative Services

**Attachment D**  
**AMENDMENT NO. 1 TO**  
**PROJECT FINANCE AGREEMENT**  
**STATE REVOLVING FUND PROJECT NO. C-06-5044-110**  
**AGREEMENT NO. 09-814-550**

This Amendment No. 1 to Project Finance Agreement (including all exhibits and attachments hereto, this "Amendment No. 1") is dated as of \_\_\_\_, 2016, and is by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board"), and the City of Palo Alto, a charter city duly organized and existing under the laws of the State of California (the "Recipient").

**WITNESSETH**

WHEREAS, the State Water Board and the Recipient previously entered into Project Finance Agreement No. 09-814-550 (the "Original Agreement") to provide financing for the Project described therein;

WHEREAS, the Original Agreement provides that the Recipient's Obligation under the Original Agreement is secured by a lien on and pledge of Net Revenues in priority as specified in Exhibit F to the Original Agreement;

WHEREAS, Exhibit D of the Original Agreement provides that that the Recipient's obligations under the Original Agreement shall be secured on a parity with the outstanding 1999 Series A Revenue Bonds;

WHEREAS, the State Water Board and the Recipient wish to amend Exhibits D and F to correct the priority relationship of the Obligation to other System Obligations;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successor and assigns, do mutually promise, covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

All capitalized terms used in this Amendment No. 1 and not defined in this Amendment No. 1 have the meaning given such terms in the Original Agreement.

**ARTICLE II**

**AMENDMENT OF THE ORIGINAL AGREEMENT**

2.1 Section D of the Original Agreement is hereby amended and restated in its entirety as shown on Attachment 1.

2.2 Section F of the Original Agreement is hereby amended and restated in its entirety as shown on Attachment 2.

### ARTICLE III

#### MISCELLANEOUS

3.1 In the event of any conflict between the Original Agreement and this Amendment No. 1, the terms of this Amendment No. 1 shall govern. Otherwise, the Original Agreement shall remain in full force and effect.

3.2 This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

3.3 The State Water Board and the Recipient hereby agree that any action arising out of this Amendment No. 1 shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

#### CITY OF PALO ALTO

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

#### STATE WATER RESOURCES CONTROL BOARD

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

City of Palo Alto  
Amendment No. 1 to  
Agreement No.: 09-814-550  
Project No.: C-06-5044-110

Attachment 1  
AMENDMENT OF EXHIBIT D

Exhibit D of the Original Agreement is hereby amended and restated in its entirety as follows:

EXHIBIT D -- SPECIAL CONDITIONS

Special condition as follows:

D.1 The financing agreement shall be subordinate to the outstanding 1999 Series A Revenue Bonds; and

D.2 The financing agreement shall be subordinate to the outstanding 1995 Series A Revenue Bonds; and

D.3 The City of Palo Alto shall fund a reserve fund of one year's debt service and maintain it throughout the term of the financing agreement.



Attachment 2  
AMENDMENT OF EXHIBIT F

Exhibit F of the Original Agreement is hereby amended and restated in its entirety as follows:

EXHIBIT F -- SCHEDULE OF SYSTEM OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations:

The following outstanding debt is senior to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
1995 Utility Revenue Bonds	5-0-6.25%	\$8,640,000	\$5,650,000	June 1, 2020
1999 Utility Revenue Bonds	3.25-5.25%	\$17,735,000	\$14,670,000	June 1, 2024

The following outstanding debt is on parity with the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
Mountain View/Moffett Area Reclaimed Water Pipeline Project SRF Contract #07-814-550-0 Project #C-06-4132-110	0%*	\$9,000,000	\$9,000,000	June 30, 2029

\* Local Match Financing

The following outstanding debt is subordinate to the Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
Not Applicable				

## Attachment E

### **ADDENDUM NO. EIGHT 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. Eight (8) to the Basic Agreement for the Acquisition, Construction and Maintenance of a Joint Sewer System is made and entered into on \_\_\_\_\_, 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 seven 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 (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. The Parties now desire to agree upon and implement projects to improve the Joint System by planning and designing the rehabilitation of the primary sedimentation tanks, the fixed film reactors, a new laboratory/Environmental Service building, and constructing and implementing a sludge dewatering and load-out facility (individually, “Project”, collectively, the “Projects”). The Parties also agree to provide for the sharing of costs associated with the Projects. The Projects 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.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Addendum No. Eight (8), the Basic Agreement is hereby amended, as follows:

**Section 2.** Paragraph 38 is hereby added to the Basic Agreement to read, as follows:

“38. IMPLEMENTATION OF THE PROJECTS. Palo Alto, Mountain View, and Los Altos hereby approve the Projects for planning/design of the primary sedimentation tanks, the fixed film reactors, a new laboratory/Environmental Service building, and the design/construction of a sludge dewatering and load-out facility (the “Projects”). Each Party shall pay its share of the Projects 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” means all costs incurred in connection with the planning, design, construction and implementation of the Projects. Without limiting the generality of the foregoing, Project Costs shall include, but not be limited to: design, engineering, and other consultants’ fees and costs, including fees incurred pursuant to agreements with engineers, contractors and other consulting, design and construction professionals; environmental analysis and approval costs, including cost of compliance with the California Environmental Quality Act; 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 pursue State Revolving Fund (“SRF”) loans from the State Water Resources Control Board (“SWRCB”) to fund the costs of the Projects. The maximum amount of the SRF planning/design loan sought for the planning/design of the primary sedimentation tanks, the fixed film reactors, and a new laboratory/Environmental Service building will be \$6.75 million. The maximum amount of the SRF construction loan sought for the design/construction of a sludge dewatering and load-out facility will be \$28 million. The 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 propose to raise their sewer use rates for the 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 Projects or the Project, Palo Alto shall notify the Parties promptly. Following notification of the termination of the SRF, the Parties shall meet in a timely manner to discuss alternative funding sources and strategies for completion of the Projects. 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 or the Projects.

The Parties shall remain responsible for Project costs and loans incurred, whether before or after termination of the Project/Projects, in connection with the termination

of the Project planning/design/construction contract, 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 SRF loan 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 this addendum No. Eight and be in force for the term of the SRF loan.

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 1.** Paragraph 27. TERM. is amended to read as follows:

The Basic Agreement shall commence upon execution and will terminate on December 31, 2060, provided that any party hereto who wishes to withdraw from the Basic Agreement shall tender written notice of withdrawal at least ten (10) years preceding the date of withdrawal.

**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.

ATTEST:

CITY OF PALO ALTO

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City Manager

ATTEST:

CITY OF MOUNTAIN VIEW

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
FINANCIAL APPROVAL:

\_\_\_\_\_  
Finance and Administrative Services Director

ATTEST:

CITY OF LOS ALTOS

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City Manager

**Attachment F**

**AMENDMENT NO. SIX TO  
CONTRACT RESTATEMENT AND AMENDMENT NO. C237  
BETWEEN THE CITY OF PALO ALTO AND  
THE EAST PALO ALTO SANITARY DISTRICT**

This Amendment No. Six (6) to the Contract Restatement and Amendment No. C237 is made and entered into on \_\_\_\_\_, by and between the CITY OF PALO ALTO, a chartered municipal corporation of the State of California (the “City”) and East Palo Alto Sanitary District, a public corporation under the laws of the State of California (the “District”) (individually, a “Party”, collectively, the “Parties”).

**RECITALS:**

- A. On March 11, 1940, the Parties entered into a contract, “Contract Restatement and Amendment No. C237,” whereby the City agreed to provide treatment of the District’s wastewater, which contract was subsequently amended by amendments dated September 10, 1963, June 25, 1964, and May 1971 (the “Original Agreement”);
- B. On October 10, 1968, the City joined with the cities of Mountain View and Los Altos to fund the construction, operation, and maintenance of a regional sewage treatment plant (the “Treatment Plant”) that is part of a sewerage system (“System”), owned and operated by the City;
- C. In May 1971, the City and District agreed that the District’s share of the primary/secondary design capacity of the Treatment Plant would be 2.25 mgd (ADWF). The Treatment Plant was subsequently expanded to include tertiary treatment, and the District’s share of tertiary capacity was established at 1.9 mgd (ADWF);
- D. On March 16, 1989, the Parties restated and amended the Original Agreement (the “1989 Agreement”) to provide for the District’s participation in financing an expansion of the Treatment Plant’s capacity from 35.0 primary/secondary capacity to 38.0 mgd (ADWF) (40.0 AAF) and from a tertiary capacity of 30.6 mgd to 38.0 mgd ADWF (40.0 AAF);
- E. On May 30, 1989, the Parties amended the 1989 Agreement to revise the billing and payment provisions in Paragraph 6.b of the 1989 Agreement (“Amendment No. 1”);
- F. On December 18, 1989, the Parties amended the 1989 Agreement to provide specific measures and procedures for complying with federal and state laws and regulations regarding wastewater collection, transmission, treatment and disposal in Paragraph 9 of the 1989 Agreement (“Amendment No. 2”);
- G. On December 7, 1998, the Parties amended the 1989 Agreement to add Paragraph 26 to permit the rehabilitation of the City’s incinerators (“Amendment No. 3”);
- H. On November 19, 2003, the Parties executed an agreement entitled “Settlement and Release Agreement” and amended Paragraphs 6.a and 8 of the 1989 Agreement on June

2, 2005 to be consistent with the Settlement and Release Agreement (“Amendment No. 4”);

- I. On March 19, 2009, the Parties amended the 1989 Agreement to add Paragraph 28, which provided for the funding, design, and construction of an ultra violet treatment system at the Treatment Plant (“Amendment No. 5”). The 1989 Agreement and Amendment Nos. 1-5 are referred to collectively, herein as the “Contract.”
- J. The City owns and operates the System pursuant to the Contract, is responsible for making capital additions to the System, and intends to renovate the Treatment Plant. The Parties desire to amend the Contract to clarify the indemnity provision applicable to the Contract and to set forth the terms of their agreement for the sharing of costs associated with the planning and design of the rehabilitation of the primary sedimentation tanks, the fixed film reactors, a new laboratory/Environmental Service building, and the design and construction of a sludge dewatering and load-out facility (individually, the “Project”, collectively, the “Projects”). The Projects are set forth in more detail in **Exhibit I**, attached to this Amendment No. Six. The Projects will become part of the Treatment Plant, which is owned and operated by the City as part of the System.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Amendment No. Six (6), the Contract is hereby amended as follows:

**Section 1.** Paragraph 29 is hereby added to the Contract to read, as follows:

“29. IMPLEMENTATION OF THE PROJECTS. City and District hereby approve the Projects. Each Party shall pay its share of Project Costs for the Projects in proportion as it owns capacity in the Joint System or portion thereof, as shown in Exhibit “H” to Amendment No. Three (3) to the Contract. “Project Costs” means all costs incurred in connection with the planning, design, construction and implementation of the Projects. Without limiting the generality of the foregoing, Project Costs shall include, but not be limited to: design, engineering, and other consultants’ fees and costs, including fees incurred pursuant to agreements with engineers, contractors and other consulting, design and construction professionals; environmental analysis and approval costs, including cost of compliance with the California Environmental Quality Act; 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 the City to pursue State Revolving Fund (“SRF”) loans from the State Water Resources Control Board (“SWRCB”) to fund the costs of the Projects. The maximum amount of the SRF planning/design loan sought for the planning/design of the primary sedimentation tanks, the fixed film reactors, and a new laboratory/Environmental Service building will be \$6.75 million. The maximum amount of the SRF construction loan sought for the design/construction of a sludge



dewatering and load-out facility will be \$28 million. The loan will have a thirty year repayment term. The SRF loan shall be repaid in the same proportionate share, as shown on Exhibit "H" to Amendment No. Three (3) to the Contract. The Parties further agree that, if necessary, each Party shall raise their sewer use rates for the repayment of the SRF loan, operations, and/or maintenance of the Project, following any appropriate process 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 a Project or the Projects, Palo Alto shall notify the Parties promptly. Following notification of the termination of the SRF, the Parties shall meet in a timely manner to discuss alternative funding sources and strategies for completion of the Projects. 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 or the Projects immediately.

The Parties shall remain responsible for Project Costs and loans incurred, whether before or after termination of the Project, in connection with the termination of the Project construction contract, in the same proportion to each organization's share, as shown on Exhibit "H" to Amendment No. Three (3) to the Contract. Unless earlier terminated, the obligations and responsibilities of the Parties shall commence with the execution of this amendment and be in force for the life of the SRF loan.

Pursuant to Paragraph 6.c of the Contract, the City will supply the District with all information supporting the City's determinations regarding the Project Costs, including but not limited to, information relating to the computation of the relative shares of each organization. The City will make available all such information (historical and current) to the District's auditors, on request.

District shall pay its share of any Project Costs within ten (10) business days of receipt of the quarterly billing statement sent by the City. If District disputes the correctness of an invoice, it shall pay the invoice in full and the dispute shall be resolved after payment in accordance with the Contract, and shall not offset against any payment due. The Parties shall undertake any dispute resolution in accordance with Paragraph 10 of the Contract.

**Section 2.** Paragraph 19 of the Contract and Paragraph 7 of Amendment No. 2 are hereby deleted and replaced with the following:

**Indemnity.** Each of the Parties shall defend, indemnify and hold the other party harmless of and from all claims, liabilities, actions, causes of action, proceedings, damages, fines, penalties, costs, expenses, attorneys' fees or any other forms of pecuniary or non-pecuniary relief which result from:

(i) That party's violation of laws and regulations governing the collection, transmission, treatment and disposal of wastewater or wastewater byproducts, including, without limitation, laws and regulations governing disruption of treatment processes or operations, degradation of sludge quality, and NPDES permit violations attributable to the conduct of that party or other persons, including industrial waste dischargers for whom that party exercises regulatory responsibility.

(ii) That party's failure to exercise reasonable care in the operation and maintenance of its wastewater facilities.

**Section 3.** Except as modified herein, the Contract 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 Amendment No. Six to the Contract Restatement and Amendment No. C237 Between the City of Palo Alto and The East Palo Alto Sanitary District as of the date first written above.

ATTEST:

CITY OF PALO ALTO

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City Manager

ATTEST:

EAST PALO ALTO SANITARY DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_ .

Title: \_\_\_\_\_ .

APPROVED AS TO FORM:

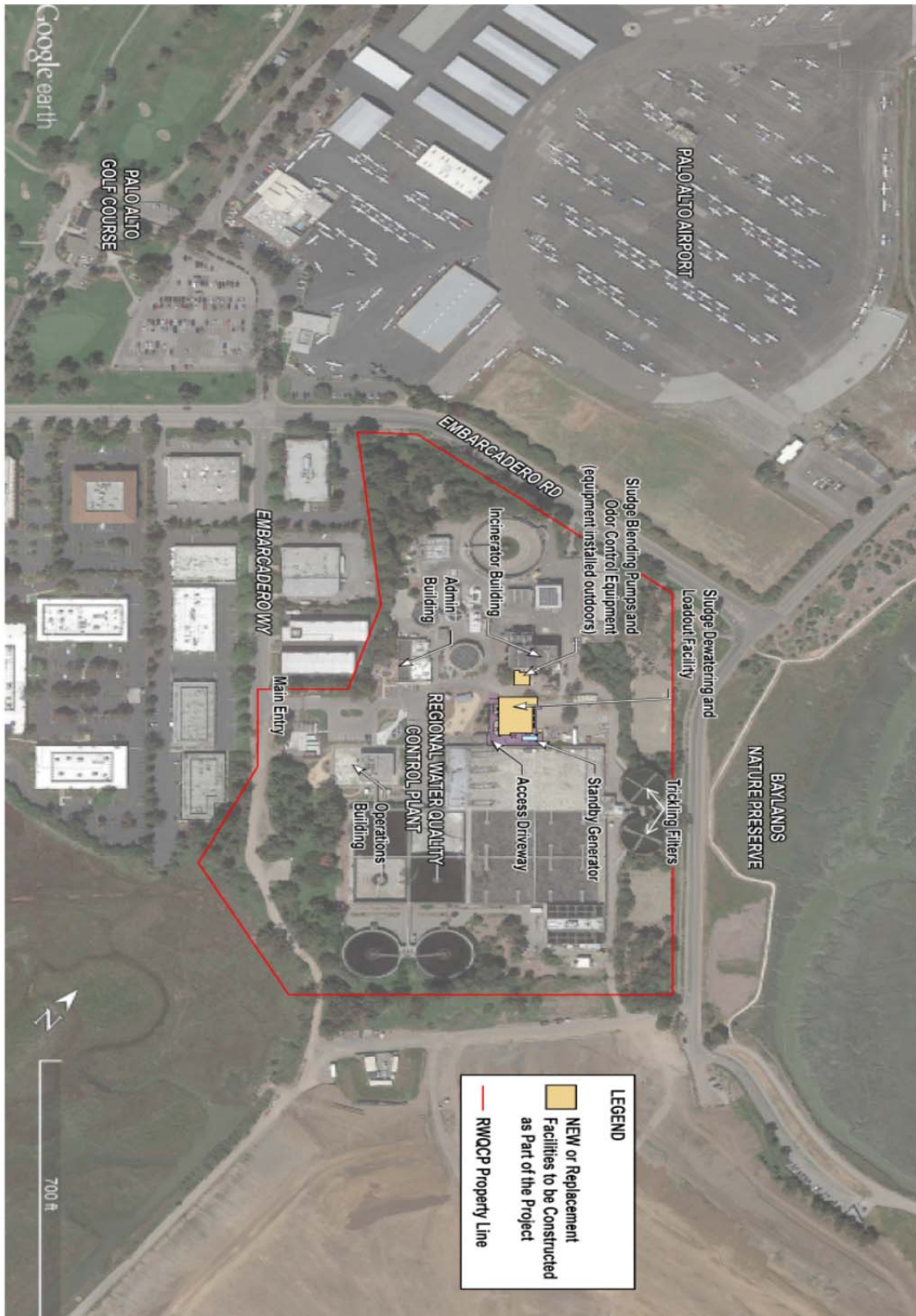
\_\_\_\_\_  
Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_

## EXHIBIT I

### PROJECT DESCRIPTION / DEPICTION



AERIAL PHOTO - EXISTING CONDITIONS AND LOCATION OF NEW SLUDGE DEWATERING & LOADOUT FACILITY  
PALO ALTO REGIONAL WATER QUALITY CONTROL PLANT

## **ATTACHMENT G**

### **AMENDMENT NO. FOUR TO CONTRACT NO. C869 BETWEEN THE CITY OF PALO ALTO AND THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY**

This Amendment No. Four (4) to the Contract is made and entered into on \_\_\_\_\_, by and between the CITY OF PALO ALTO, a chartered city and a chartered municipal corporation of the State of California ("City") and the BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California ("Stanford") (individually, a "Party"; collectively, the "Parties").

#### **RECITALS:**

A. The Parties have entered into that certain Contract Between Palo Alto and Stanford, executed on November 30, 1956, as amended by the Addendum and Amendments described below (collectively, the "Contract"). The Contract has been amended three times as follows: Addendum No. One (1) to the Contract Between the City of Palo Alto and Stanford, dated as of June 11, 1971; Amendment No. Two (2) to the Contract Between the City of Palo Alto and Stanford, dated as of November 2, 1998; and Amendment No. Three (3) to the Contract Between the City of Palo Alto and Stanford, dated as of March 16, 2009.

B. Palo Alto owns and operates the sewerage system (the "System") pursuant to the Contract, and is responsible for making capital additions to the System. Under the Contract, prior to commencement of construction of any capital additions or enlargements of the System, City and Stanford shall agree upon the terms of payment by Stanford of its proportionate cost. The Parties now desire to agree upon the sharing of costs associated with the planning and design of the rehabilitation of the primary sedimentation tanks, the fixed film reactors, a new laboratory/Environmental Service building, and the design and construction of a sludge dewatering and load-out facility (individually, the "Project", collectively, the "Projects"). The Projects will become part of the regional water quality control plant (the "Plant"), which is owned and operated by Palo Alto as part of the System.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Amendment No. Four (4), the Contract is hereby amended as follows:

**Section 1.** Paragraph 24 is hereby added to the Contract to read, as follows:

"24. IMPLEMENTATION OF THE PROJECTS. Palo Alto and Stanford hereby approve the planning/design of the rehabilitation of the primary sedimentation tanks, the fixed film reactors, a new laboratory/Environmental Service building, and the design/construction of a sludge dewatering and load-out facility (individually, the "Project", collectively, the "Projects"). Each Party shall pay its share of the Project Costs for the Projects in proportion to the capacity it owns in the Joint System or

portion thereof as shown in Exhibit "H" to Amendment No. 2 to the Contract. "Project Costs" means all costs incurred in connection with the planning, design, construction and implementation of the Projects. Without limiting the generality of the foregoing, Project Costs shall include, but not be limited to: design, engineering, and other consultants' fees and costs, including fees incurred pursuant to agreements with engineers, contractors and other consulting, design and construction professionals; environmental analysis and approval costs, including cost of compliance with the California Environmental Quality Act; 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 pursue State Revolving Fund ("SRF") loans from the State Water Resources Control Board ("SWRCB") to fund the costs of the Projects. The maximum amount of the SRF planning/design loan sought for the planning/design of the primary sedimentation tanks, the fixed film reactors, and a new laboratory/Environmental Service building will be \$6.75 million. The maximum amount of the SRF construction loan sought for the design/construction of a sludge dewatering and load-out facility will be \$28 million. The loan will have a thirty-year repayment term. The SRF loan shall be repaid by the Parties in the same proportionate shares as shown on Exhibit "H" to Amendment No. Two to the Contract.

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

The Parties shall remain responsible for Project Costs and loans incurred, whether before or after termination of the Project/Projects, in connection with the termination of the Project planning/design/construction contract(s), in the same proportion to each organization's share, as shown on Exhibit "H" to Amendment No. Two (2) to the Contract. Unless earlier terminated, the obligations and responsibilities of the Parties shall commence with the execution of this Amendment No. Four and be in force for the term of the SRF loan.

Stanford shall pay its share of any Project Costs within ten (10) business days of receipt of the annual billing statement sent by Palo Alto. If Stanford disputes the correctness of an invoice, it shall pay the invoice in full and the dispute shall be resolved after payment in accordance with the Contract, and shall not offset against any payment due.

**Section 2.** Except as modified herein, the Contract 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 Amendment as of the date first written above.

ATTEST:

CITY OF PALO ALTO

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City Manager

ATTEST:

THE BOARD OF TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY

\_\_\_\_\_  
APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Attorney

Title: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_



Attachment C

Resolution No. 9631

Resolution of the Council of the City of Palo Alto Establishing One or More Pledged Sources of Revenue For Repayment of Funding Pursuant to The Federal Clean Water Act Amendments

R E C I T A L S

A. The City of Palo Alto (the "City") desires to finance the costs of planning, design, and/or construction of certain public facilities and improvements relating to its wastewater system, including the planning/design of primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building, and the construction of a sludge treatment and load-out facility (the "Projects") that were identified in the Regional Water Quality Control Plant's Long Range Facility Plan.

B. The City intends to finance the planning, design, and/or construction of the Projects or portions of the Projects with moneys ("Project Funds") provided by the State of California, acting by and through the State Water Resources Control Board (the "Water Boards").

C. Section 603(d)(1)(C) of the Federal Clean Water Act Amendments require each financing recipient to establish one or more pledged sources of revenue for Clean Water State Revolving fund (CWSRF) financial assistance.

D. Revenue will be considered pledged when the City adopts a resolution committing a source of funds for repayment.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The City of Palo Alto hereby pledges Net Revenues of its Wastewater Treatment enterprise fund to repayment of any and all Clean Water State Revolving Fund financing incurred for CWSRF Project No. 8104, including the planning/design of primary sedimentation tanks, fixed film reactors, and a laboratory/environmental service building, and CWSRF Project No. 8091-110, including the design and construction of a sludge dewatering and load-out facility. Net Revenues of the City's Wastewater Treatment enterprise, and other terms relevant to this action, are defined as follows:

"Net Revenues" means, with respect to the Wastewater Treatment enterprise, for any period of computation, the amount of the Gross Revenues received from the Wastewater Treatment enterprise during such period, less the amount of Maintenance and Operation Costs of the Wastewater Treatment enterprise becoming payable during such period.

"Gross Revenues" means, for any period of computation, all gross charges received for, and all other gross income and revenues derived by the City from, the ownership or operation of the Wastewater Treatment enterprise or otherwise arising from the Wastewater Treatment enterprise during such period, including but not limited to (a) all Charges received by

the City for use of the Wastewater Treatment enterprise, (b) all receipts derived from the investment of funds, (c) transfers from (but exclusive of any transfers to) any stabilization reserve funds, and (d) all moneys received by the City from other entities whose customers are served pursuant to contracts between those entities and the City.

"Maintenance and Operation Costs" means the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Wastewater Treatment enterprise, calculated in accordance with sound accounting principles, including the cost of supply of water, gas and electric energy under contracts or otherwise, the funding of reasonable reserves, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Wastewater Treatment enterprise in good repair and working order, and including all reasonable and necessary administrative costs of the City attributable to the Wastewater Treatment enterprise and any financing instruments incurred to finance improvements to the Wastewater Treatment enterprise, such as salaries and wages and the necessary contribution to retirement of employees, overhead, insurance, taxes (if any), expenses, compensation and indemnification of any bond trustee or other lender, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of any financing instrument related to the Wastewater Treatment enterprise, but excluding depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

"Charges" means fees, tolls, assessments, rates and rentals prescribed under applicable law by the City Council for the services and facilities of the Wastewater Treatment enterprise.

This pledged source of revenue shall remain in effect until such financing is fully discharged unless modification or change of such dedication is approved in writing by the State Water Resources Control Board.

SECTION 2: The Council's pledge of the revenues to repay State Revolving Fund financing for the above-referenced projects does not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. Council approved an Initial Study/Mitigated Negative Declaration for the sludge-dewatering and loadout facility project on March 28, 2016 (Staff Report ID# 6424).

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Implementation of the primary sedimentation tanks, fixed film reactors, and the laboratory/environmental service building projects is subject to future CEQA analysis.

INTRODUCED AND PASSED: October 17, 2016


AYES: BERMAN, BURT, DUBOIS, FILSETH, HOLMAN, KNISS, SCHARFF, SCHMID, WOLBACH


NOES:

ABSENT:

ABSTENTIONS:


ATTEST:

DocuSigned by:  
  
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City Clerk


DocuSigned by:  
  
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Mayor

APPROVED AS TO FORM:

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Senior Deputy City Attorney

DocuSigned by:  
  
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City Manager

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Director of Public Works

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Director of Administrative Services

## Certificate Of Completion

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Status: Completed

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Source Envelope:

Document Pages: 3

Signatures: 6

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Kim Lunt

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250 Hamilton Ave

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Palo Alto , CA 94301

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## Signer Events

Amy Bartell

Amy.Bartell@CityofPaloAlto.org

Senior Deputy City Attorney

City of Palo Alto

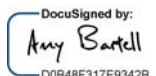
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Lalo Perez

Lalo.Perez@CityofPaloAlto.org

Chief Financial Officer

City of Palo Alto

Security Level: Email, Account Authentication  
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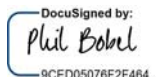
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Phil Bobel

phil.bobel@cityofpaloalto.org

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James Keene

james.keene@cityofpaloalto.org

City Manager

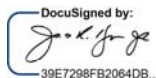
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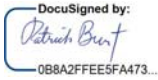



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