



# City of Palo Alto

## City Council Staff Report

(ID # 11773)

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**Report Type: Consent Calendar**

**Meeting Date: 6/7/2021**

**Summary Title: Effluent Transfer Agreement with City of Los Altos**

**Title: Approval of Effluent Transfer Agreement Between the City of Palo Alto and the City of Los Altos**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Staff recommends that Council approve and authorize the City Manager to execute the Effluent Transfer Agreement Between Palo Alto and City of Los Altos (Attachment A), authorizing Palo Alto to pass-through a portion of funding from Valley Water to the City of Los Altos, consistent with the City's Partnership Agreement with Valley Water.

### **Executive Summary**

In November 2019, Council approved the Agreement between the City of Palo Alto, City of Mountain View, and Santa Clara Valley Water District to Advance Resilient Water Reuse Programs in Santa Clara County (Partnership Agreement) (Council Staff Report #[10627](#)). The Partnership Agreement includes an option for the Santa Clara Valley Water District (Valley Water) to receive approximately half of the treated wastewater produced by the RWQCP for use in the County south of Mountain View.

The Regional Water Quality Control Plant (RWQCP) treats wastewater from the City of Palo Alto (Palo Alto), City of Mountain View (Mountain View), City of Los Altos, East Palo Alto Sanitary District, Stanford University, and Los Altos Hills. A small fraction of the effluent from the RWQCP is further treated and then used for irrigation and toilet flushing. Palo Alto and Mountain View are the largest RWQCP partners, which is why the Partnership Agreement was between Valley Water, Mountain View, and Palo Alto. In order to secure half of the flow from the RWQCP to Valley Water, Palo Alto agreed to negotiate individual transfer agreements between Palo Alto and the other four agencies which are referred to as the "small partner agencies".

Since 2019, Palo Alto negotiated with the small partner agencies to secure their flow for the Valley Water's regional purification facility. The Effluent Transfer Agreement with the small partner agencies of the RWQCP will (1) commit the partner agencies to contribute their share

of effluent to the transfer and (2) enable the partner agencies to receive a proportional share of the payments from Valley Water. At this time, only City of Los Altos has approved an Effluent Transfer Agreement. Staff is continuing to work toward agreements with the other small partner agencies.

### **Background**

Water is a scarce resource in California. Availability is affected by droughts and climate change and may be subject to changes to the State water system. The RWQCP is a local source of drought-proof, sustainable water, only a small fraction of which is currently being used for irrigation and toilet flushing. In December 2017, Council adopted the S/CAP Sustainability Implementation Plan (SIP) (Council Staff Report #8487). The SIP included a key action to explore the most effective uses of recycled water, both inside and outside Palo Alto.

Since Valley Water is the major wholesaler of water in the Santa Clara County, Palo Alto and Mountain View entered into the Partnership Agreement, which grants Valley Water an option to take approximately half of the effluent from the RWQCP. Valley Water intends to purify the effluent and use it to recharge the groundwater basin south of Mountain View. Palo Alto agreed to secure effluent from the other small partner agencies to meet the future effluent transfer agreement demands.

### **Discussion**

The Effluent Transfer Agreement with the City of Los Altos will commit City of Los Altos' effluent to the transfer under the Partnership Agreement. This commitment adds certainty to Valley Water's planning efforts and increases the scale of potential regional water reuse.

In exchange for the small partner agencies' commitment, the Partnership Agreement includes financial incentives. Prior to Valley Water exercising the option to take the effluent, Valley Water will pay \$100,000 per year that increases by CPI annually, allocated among the small partners that commit effluent to a future transfer, as well as \$100,000 per year to be split in half between Palo Alto and Mountain View. The Partnership Agreement specifies that a small partner must approve the Effluent Transfer Agreement prior to December 31 in order to be eligible for a share of the \$100,000 for that fiscal year and ongoing. Since City of Los Altos is the only small partner to sign onto the Effluent Transfer Agreement at this time, the City of Los Altos will receive \$100,000 that increases with CPI annually. If Valley Water exercises its option under the Partnership Agreement, Valley Water will pay \$1 million per year to be allocated among the RWQCP partners that commit treated effluent to the transfer. At that time, staff would return to Council to discuss allocation of the increased revenue stream. Approval and execution of the proposed Effluent Transfer Agreements will ensure that the partner agencies receive their portion of the payments from Valley Water. The term of potential effluent delivery to Valley Water is 63 years, long enough to economically justify the large capital investment and meet Valley Water's long-term water supply planning objectives.

In accordance with the terms of the Partnership Agreement, Palo Alto and Valley Water are

assessing the feasibility of constructing a large purification facility in Palo Alto, specifically at the former Los Altos Treatment Plant site at the end of San Antonio Road. As this assessment proceeds, staff may return to Council with more details about a potential lease agreement and management of reverse osmosis concentrate from the regional purification facility.

### **Timeline**

Below is the timeline of activities associated with the proposed Effluent Transfer Agreements:

1. Partnership Agreement signed by Valley Water, Palo Alto, and Mountain View in December 2019.
2. Palo Alto receives first option payment from Valley Water July 2020; small partners did not receive proportional payment since no Effluent Transfer Agreements were in effect.
3. City of Los Altos approves Effluent Transfer Agreement on [August 25, 2020](#).
4. Los Altos Hills receives a brief presentation regarding the Effluent Transfer on September 17, 2020.

### **Resource Impact**

There are no financial impacts to the Fiscal Year 2021 budget associated with staff's recommendation. No new or additional funds are associated with the approval of the Effluent Transfer Agreement. Valley Water currently provides \$200,000 which is increased based on CPI to be allocated among RWQCP partners; half of the amount is shared between Mountain View and Palo Alto to offset future operating and maintenance expense of the small salt removal facility, while the other half is shared amongst the small partner agencies who approve the Effluent Transfer Agreement. Currently, Los Altos is the only small partner to approve the Effluent Transfer Agreement; therefore, they will receive the full half of the \$200,000 payment from Valley Water unless the status of other partners changes. Approval of the Effluent Transfer Agreement will authorize Palo Alto to pass-through \$100,000 of this funding from Valley Water to the City of Los Altos as clearly stated in the Partnership Agreement

### **Policy Implications**

Expanding the use of recycled water is consistent with the Sustainability Climate Action Plan Framework (Council Staff Report #[7304](#)), the Sustainability Implementation Plan (Council Staff Report #[8487](#)), and the Council's decision to support the Bay Delta Plan.

### **Stakeholder**

### **Engagement**

Palo Alto hosted a community meeting on October 23, 2019 to inform the community and answer questions about the components of the proposed Agreement. Approximately 20 members of the public attended and approached staff during the break-out sessions to get direct answers to questions. Overall, the attendees were supportive of the proposed Agreement. Staff provided staff reports and presentations to partner agencies; staff did not receive any public comments or questions regarding the Effluent Transfer Agreements. Staff has been in contact with other small partner agencies and will provide updated information should their status change.

**Environmental Review**

The Effluent Transfer Agreement Between Palo Alto and City of Los Altos is not subject to review under the California Environmental Quality Act (CEQA) because the Agreement does not meet the definition of a project under Public Resources Code 21065. The Agreement does not commit the parties to a specific course of action or project. Valley Water will be responsible for compliance with environmental regulations including CEQA and NEPA review, as applicable, should they move forward with a regional water reuse program.

**Attachments:**

- Attachment A - Partner Effluent Transfer Agreement version Los Altos approved by Los Altos on 25Aug2020

**EFFLUENT TRANSFER AGREEMENT  
BETWEEN CITY OF PALO ALTO  
AND CITY OF LOS ALTOS**

This Effluent Transfer Agreement (Agreement) effective June 7, 2021, is entered into by and between the City of Palo Alto, a California chartered municipal corporation (“Palo Alto”), and the City of Los Altos, a California municipal corporation (“Los Altos”). Palo Alto and Los Altos are referred to together as the “Parties” and individually as a “Party”.

**RECITALS**

A. Effluent generated in and from Los Altos has long been treated at the Regional Water Quality Control Plant (“RWQCP”) owned and operated by the City of Palo Alto pursuant to the terms and conditions of that certain Basic Agreement for the Acquisition, Construction and Maintenance of a Joint Sewer System executed on October 10, 1968 by and between the City of Los Altos, the City of Mountain View, and the City of Palo Alto, as amended (the “Basic Partner Agreement”).

B. The RWQCP treats effluent from several cities and other entities – the cities of Los Altos, Palo Alto, and Mountain View, the Town of Los Altos Hills, the East Palo Alto Sanitation District, and Stanford University. These entities are collectively referred to as the “RWQCP Partner Agencies”.

C. Currently, most of the Effluent is discharged to the San Francisco Bay after treatment. Only five percent is further treated to be used as Recycled Water to meet the limited present demand for Recycled Water in the RWQCP Service Area. While Palo Alto anticipates greater utilization of Recycled Water will occur with an advanced water purification facility project underway at the RWQCP, most of the Effluent would continue to be released into the Bay.

D. In late 2019, Palo Alto, the City of Mountain View (“Mountain View”), and the Santa Clara Valley Water District (“Valley Water”) entered into a long-term agreement that would annually transfer 9 MGD of Effluent to Valley Water for regional recycled water projects as part of an effort to develop locally reliable water supply sources to offset supplies of water that would otherwise be imported via the Sacramento-San Joaquin River Delta and its tributaries, including the Tuolumne River and other mountain streams. This agreement, known as the Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County between Palo Alto, Mountain View, and Valley Water (referred to herein as the “Valley Water Agreement”), became effective on December 10, 2019 and is incorporated herein by reference.

E. Under the Valley Water Agreement, Valley Water will pay an annual option payment to Palo Alto to be divided proportionally among RWQCP Partner Agencies that

commit to a long-term transfer of Effluent to Valley Water. Valley Water's option expires after 13 years. If, and when, Valley Water exercises its option to receive the Effluent, it will pay to Palo Alto \$1 million per year for up to 9 MGD of Effluent. The \$1 million would also be divided proportionally among the RWQCP Partner Agencies based on the percentage share of the Effluent provided.

F. Los Altos desires to make the commitment to provide its Effluent to Valley Water for purposes of the Valley Water Agreement.

G. This Agreement will benefit Los Altos, Palo Alto, and a County-wide effort to achieve cost effective, environmentally beneficial utilization of treated wastewater and to establish a more resilient water supply, especially during drought conditions.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## **AGREEMENT**

### **ARTICLE A. Definitions**

As used in this Agreement, the following terms have the following meanings.

- (a) Effluent: Tertiary treated wastewater from the RWQCP that meets National Pollutant Discharge Elimination System permit requirements.
- (b) MGD: Million gallons per day, expressed as an annual average, unless otherwise noted.
- (c) Minimum Flow Delivery: An annual average of 9 MGD of Effluent to be supplied by the RWQCP to Valley Water, consistent with Appendix 1.
- (d) Recycled Water: Effluent that is treated to meet California Code of Regulations Title 22 requirements for non-potable water.
- (e) RWQCP: The Palo Alto Regional Water Quality Control Plant.
- (f) RWQCP Partner Agencies: The cities of Palo Alto, Mountain View, and Los Altos, the Town of Los Altos Hills, the East Palo Alto Sanitary District, and Stanford University.

- (g) RWQCP Service Area: RWQCP Service Area includes the service areas of the RWQCP Partner Agencies.
- (h) Startup: The point in time when Valley Water begins to receive Effluent, following initial testing and commissioning, or the point in time when Valley Water begins to pay for the Effluent as part of its Regional Program, pursuant to the Valley Water Agreement, whichever is earlier.
- (i) Valley Water Agreement: The Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County between Palo Alto, Mountain View, and Valley Water which became effective on December 10, 2019.

## **ARTICLE B - Terms**

### **1. Term.**

This Agreement shall be in effect on June 7, 2021. The Term of the Agreement shall be dependent upon the actions of Valley Water under the Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County between Palo Alto, Mountain View, and Valley Water (the "Valley Water Agreement") as follows:

- a. If Valley Water does not exercise its option to receive Effluent, this Agreement shall terminate when the time for Valley Water to exercise the option expires.
- b. If Valley Water does exercise the option, this Agreement shall remain in effect so long as Valley Water continues to receive and pay for treated effluent under the Valley Water Agreement, up to 76 years from the effective date of the Valley Water Agreement.
- c. If for any reason the Valley Water Agreement is terminated or the Effluent Transfer provision in Article D (Effluent Delivery to Valley Water) of the Valley Water Agreement is terminated by the parties to that agreement, then this Agreement will also terminate.

### **2. Commitment of Effluent.**

- a. Los Altos commits and agrees to transfer, and allows Palo Alto to effect the transfer, of 60 percent to 100 percent of Los Altos' effluent flow into the RWQCP to Valley Water each year for the Term of this Agreement.
- b. When Palo Alto provides notice to Los Altos of the date for Startup, Los Altos will provide to Palo Alto a firm commitment of the amount of Los Altos' effluent flow into the RWQCP that Palo Alto may transfer to Valley Water upon Startup and for the remainder of that fiscal year. The amount shall be no less than 60 percent,

and up to 100 percent, of Los Altos' effluent flow for the covered period.

- c. Every January 31<sup>st</sup> after Startup, Los Altos will provide to Palo Alto a firm commitment of the amount of Los Altos' effluent flow into the RWQCP that Palo Alto may transfer to Valley Water in the next fiscal year (July 1 of the same year to June 30 of the following year). The amount shall be no less than 60 percent, and up to 100 percent, of Los Altos' effluent flow for the fiscal year period.

### **3. Option Payments Prior to Startup**

- a. Amount of Payment. Under the Valley Water Agreement, Palo Alto will receive from Valley Water \$100,000 per year (in 2019 dollars, subject to annual adjustment based on CPI) ("Annual Commitment Payment") until (a) June 1, 2033, or (b) at Startup, whichever occurs first.

Each year, Palo Alto will distribute to Los Altos and other RWQCP Partner Agencies (other than Palo Alto and Mountain View) that have committed their Effluent for the term of this Agreement by January 31<sup>st</sup> of the same calendar year, the Annual Commitment Payment divided proportionally among the agencies, by the percentage of the effluent received at the RWQCP attributable to each agency.

- b. Timing of Payment. Each year beginning in 2021, Palo Alto shall provide to Los Altos its share of the Annual Commitment Payment by applying the amount of its share as a credit on future partner billing under the Basic Partner Agreement.
- c. Responsibility for Payment.

Palo Alto's obligations in this Section 3 are contingent on Valley Water transferring the funds to Palo Alto. Palo Alto's responsibility to distribute the payment to Los Altos only occurs upon receipt of the Annual Commitment Payment from Valley Water.

### **4. Payments for Effluent**

- a. Amount of Payment. Under the Valley Water Agreement, upon Startup, Palo Alto will receive from Valley Water \$1,000,000 per year (in 2019 dollars, subject to annual adjustment based on CPI) ("Effluent Purchase Payment") for the Minimum Flow Delivery during the term of the Valley Water Agreement, subject to proration in the first year and payments provided by August 31 for the preceding fiscal year. If the amount of Effluent provided to Valley Water falls below 9 MGD in any year, the amount of the Effluent Purchase Payment will be reduced in proportion.

Palo Alto will distribute to Los Altos and other RWQCP Partner Agencies (including Palo Alto and Mountain View) that have committed their Effluent for transfer to Valley Water by January 31<sup>st</sup> of the same calendar year, the Effluent Purchase Payment received from Valley Water divided proportionally among the agencies based on the actual amount of Effluent provided to Valley Water attributable to each agency that year.

- b. Timing of Payments. Palo Alto shall provide to Los Altos its share of the Effluent Purchase Payment by applying the amount of its share as a credit on future partner billing under the Basic Partner Agreement.
- c. Responsibility for Payment.

Palo Alto's obligations under this Section 4 are contingent on Valley Water transferring the funds to Palo Alto. Palo Alto's responsibility to distribute the payment to Los Altos only accrues upon receipt of the annual Effluent Purchase Payment from Valley Water.

#### **5. Future Sale of Additional Effluent.**

If Effluent in excess of 9 MGD is available and Valley Water desires to purchase additional Effluent, any future sale will be shared proportionally among the participating RWQCP Partner Agencies that desire to participate in any future sale. Palo Alto will provide Los Altos with notice of the proposed terms for a future sale and an opportunity to comment and discuss with Palo Alto prior to Palo Alto entering into an agreement or amendment governing such sale with Valley Water.

#### **6. Local Water Conservation Programs Allowed; No Minimum Flow Required.**

Los Altos will continue to encourage water conservation and future water conservation programs. Nothing in this Agreement requires Los Altos to guarantee a minimum effluent flow into the RWQCP.

#### **7. Choice of Law.**

This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California. The Parties agree that the venue of any action, proceeding or counterclaim shall be in the County of Santa Clara, California.

#### **8. Amendments.**

This Agreement may not be modified or amended except by a writing signed by the Parties.

**9. Captions.**

The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

**10. Counterparts.**

This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

**11. Attorneys' Fees.**

In the event of a dispute between the Parties with respect to the terms or conditions of this Agreement, the prevailing party is entitled to collect from the other its reasonable attorneys' fees as established by the judge presiding over such dispute.

**12. Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral understandings.

**13. Waiver.**

No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement (1) shall be effective unless it is in writing and signed by the Party making the waiver; (2) shall be deemed to be a waiver of, or consent, to any other breach, failure of a condition, or right or remedy, or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

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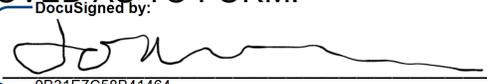
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**IN WITNESS WHEREOF**, the Parties have executed this Agreement which shall take effect on the Effective Date as stated above.

CITY OF LOS ALTOS,  
A California municipal corporation

By:   
5A5434FCD74B445...  
Brad Kilger  
Interim City Manager

APPROVED AS TO FORM:

By:   
0B31E7C58B41464...  
Jolie Houston  
City Attorney

CITY OF PALO ALTO  
A California Chartered Municipal Corporation

By: \_\_\_\_\_  
Ed Shikada  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Aylin Bilir  
Deputy City Attorney