

**FIRST AMENDMENT TO MASTER AGREEMENT  
BY AND BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND  
THE CITY OF SAN JOSE RELATING TO VALLEY WATER'S PAYMENT FOR CITY'S  
SUPPORT SERVICES TO VALLEY WATER'S PURIFIED WATER PROGRAM**

This FIRST AMENDMENT TO THE MASTER AGREEMENT ("First Amendment") is entered this 1ST day of AUGUST 2023, by the CITY OF SAN JOSE ("City"), a California municipal corporation, and Santa Clara Valley Water District ("Valley Water"), an independent special district of the State of California (City and Valley Water are sometime hereinafter referred to collectively as the "Parties").

**RECITALS**

WHEREAS, on January 27, 2022, the Parties entered into an agreement entitled "Master Agreement by and between the Santa Clara Valley Water District and City of San Jose Relating to District's Payment for City's Support Services to Valley Water's Purified Water Program" ("Agreement");

WHEREAS, the Parties desire to amend the Agreement to extend the Agreement expiration date from July 1, 2022 to July 1, 2023;

WHEREAS, on March 22, 2022, Valley Water remitted to the City, for placement into the Funding Account (as defined by the Agreement), the initial one hundred thousand dollars (\$100,000) which was due to the City within thirty (30) days of the execution of the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to revise Valley Water's obligation to remit to the City, for placement into the Funding Account, a subsequent not-to-exceed amount of one hundred thousand dollars (\$100,000);

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

**SECTION 1.** Section I of the Recitals of the Agreement shall be deleted in its entirety and amended as follows:

"1. If the Parties fail to reach agreement on a P3 Project before Valley Water issues a P3 Project RFP by July 1, 2023, the Parties then desire to continue negotiations for another potential purified water project."

**SECTION 2.** Section 2(A) of the Agreement shall be deleted in its entirety and amended as follows:

“The term of this Agreement commences on its Effective Date and expires on July 1, 2023, subject to termination per Section 2(B) or 2(C) of this Agreement.”

**SECTION 3.** Section 2(C) of the Agreement shall be deleted in its entirety and amended as follows:

“In the event that City determines the funding amount set forth in Section 3 below to be paid by Valley Water to City is insufficient to pay the cost of the City to complete the Scope of Services as more specifically describe in each Service Order, City shall cease all work. The City will notify Valley Water of the funding deficiency and the Parties will confer, except with regards to the Second Remittance (as defined in Section 3 herein this Agreement), on whether Valley Water will provide additional funding to address the funding deficiency. In the event that Valley Water declines to provide additional funding to address any funding deficiency, either Party may terminate this Agreement upon written notice to the other Party.”

**SECTION 4.** Section 3 of the Agreement shall be deleted in its entirety and amended as follows:

“Valley Water agrees to remit to the City, within thirty (30) days after this Agreement is fully executed, an initial not-to-exceed amount of \$100,000 (“Initial Remittance”) that City shall place in a funding account (“Funding Account”) to be used solely to pay for the Scope of Services described in Exhibit A rendered by the City. When more than \$90,000 of the Initial Remittance is expended, Valley Water will remit to the City an additional not-to-exceed amount of \$100,000 (“Second Remittance”) to be placed in the Funding Account. When both the Initial Remittance and the Second Remittance are fully expended, additional funds, as needed, and if approved by Valley Water’s Board of Directors, shall be remitted by Valley Water to the City for placement into the Funding Account with the issuance of each Service Order once the Parties have negotiated a detailed scope for each Task. The Parties agree that this will not serve as precedent for any future commitment by either Party related to the development of the New Project or any of Valley Water’s projects. City shall return to Valley Water any funds remaining in the Funding Account upon termination of this Agreement minus payment for any costs incurred by the City as of the date of termination.”

**SECTION 5.** Section 20 shall be added to the Agreement and shall state, in its entirety, as follows:

“Section 20. Recitals. The foregoing recitals are true and are incorporated herein by this reference as though set forth in full.”

**SECTION 6.** Except as expressly provided herein this First Amendment, this First Amendment shall not alter, amend, or otherwise modify the terms and provision of the Agreement. If there is a conflict between the Agreement and this First Amendment, this First Amendment shall govern.

**SECTION 7.** The terms and provisions of this First Amendment, together with the Agreement, shall constitute all of the terms and provision to which City and Valley Water have agreed with respect to the Agreement, and there are no other terms and provisions, oral or written, that apply to the Agreement other than as set forth herein this First Amendment and the Agreement.

**SECTION 8.** The Parties agree that California law governs this First Amendment. In the performance of this First Amendment each Party will comply with all applicable laws, ordinances, codes and regulations of the federal, state, and applicable local government.

**SECTION 9.** In the event that suit is brought by any Party to this First Amendment, the Parties agree that venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern Valley Water of California, San Jose, California.

**SECTION 10.** This First Amendment may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed to be an original, and all of which, taken together, will be deemed to be one and the same instrument. Unless otherwise prohibited by law or policy of City or Valley Water, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

**SECTION 11.** If a court of competent jurisdiction holds any provision of this First Amendment to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this First Amendment would be defeated by the loss of the illegal, unenforceable, or invalid provision.

**[Signatures to follow on the next page.]**  
**[The remainder of this page is intentionally blank.]**

**WITNESS THE EXECUTION HEREOF** on the day and year first written above.

APPROVED AS TO FORM FOR CITY:

**CITY OF SAN JOSE**

DocuSigned by:  
*Enrique A. Fernandez*  
B2D984FA4214496...  
\_\_\_\_\_  
ENRIQUE A. FERNANDEZ  
Deputy City Attorney

DocuSigned by:  
*Sarah Zarate*  
8548B8A759204CE...  
By \_\_\_\_\_  
SARAH ZARATE  
Director  
Office of Administration, Policy, and  
Intergovernmental Relations

Date 7/1/2022

Date 7/1/2022

APPROVED AS TO FORM FOR  
VALLEY WATER:

**SANTA CLARA VALLEY WATER  
DISTRICT**

DocuSigned by:  
*Anthony Fulcher*  
8EC6E7F869E470...  
\_\_\_\_\_  
ANTHONY FULCHER  
Sr. Assistant District Counsel

DocuSigned by:  
*Rick L. Callender*  
494EF672AD8C4E9...  
By \_\_\_\_\_  
RICK L. CALLENDER, ESQ  
Chief Executive Officer

Date 7/20/2022

Date 8/1/2022



# NON-CONSULTANT AGREEMENT REVIEW AND APPROVAL

(DO NOT USE FOR CONSULTANT AGREEMENTS)  
FC 1413 (05-05-22)  
(FOR USE WITH CEO APPROVED, NON-CONSULTANT AGREEMENTS/AMENDMENTS AND MOU'S UNDER \$225K)  
Page 1 of 2

### Instructions For Requestor:

- **Step 1)** Route the non-consultant agreement/amendment to be signed by the Firm/Agency via DocuSign. Once signed, proceed to Step 2;
  - **NOTE:** If VW signature is required first, proceed with **Step 2**.
- **Step 2)** Complete the following forms: 1a) FC 1413- Non-Consultant Agreement Review & Approval; and 1b) FC 1778-CEO Agreement Approval Request (AAR). Once Forms are complete, proceed to Step 3;
- **Step 3)** Route the completed forms FC 1413 & FC 1778; and the non-consultant agreement/amendment (signed by the Firm/Agency) via DocuSign to be signed internally and fully executed and enacted. (For DocuSign Signature Routing, refer to Box 16. for routing order of recipients)
  - 3a) In DocuSign, enter the names and emails for all the recipients listed in Box 16 (1-8) and designate the action for each recipient as "Signer"
  - 3b) In DocuSign, click "Next," designate signature/initial and date boxes for Recipients listed in Box 16 (1-8). For Agreement Enactment Box 16-9.a, add a text box in DocuSign to the FC 1413 form on the section designated for the Agreement No.
  - 3c) In DocuSign, for Box 16-10, add the last recipient as "Non-Consultant" and enter email [nonconsultantagmts@valleywater.org](mailto:nonconsultantagmts@valleywater.org). In DocuSign, designate the action as "Receives a Copy"
- **Step 4)** After the non-consultant agreement/amendment is executed, Requestor can draft and execute the "Award Letter" from letter templates located at: X:\Contracts Agreement Log.
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### Notes:

1. If non-consultant Agreement/Amendment is over \$225k, Board approval is required, refer to Form FC 1843. This FC 1413 Form cannot be used for non-consultant agreements/amendments over \$225K.
2. Executed non-consultant agreement/amendment will be processed by the Contracts Unit and logged and saved at: X:\Contracts Agreement Log. **NOTE: Only non-consultant Agreements/Amendments with payment requirements will be uploaded and encumbered into Infor.**
3. If Budget assistance is required, contact the Budget and Financial Analysis Unit at: <https://aqua.valleywater.org/organization/divisions-offices/administration/financial-planning-management-services-division/unit/financial-controls-unit>
4. Any inquiries regarding invoices and payment must be directed to Accounts Payable: [agreementinvoices@valleywater.org](mailto:agreementinvoices@valleywater.org)

1. Agreement Title: FIRST AMENDMENT TO MASTER AGREEMENT BY AND BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND THE CITY OF SAN JOSE RELATING TO VALLEY WATER'S PAYMENT FOR CITY'S SUPPORT SERVICES TO VALLEY WATER'S PURIFIED WATER PROGRAM	2. Project Title: PURIFIED WATER PROGRAM
3. For Amendment to an existing Agreement, provide the following: Original Agreement No. A4600X and Amendment No. 1	4. Cost, if applicable: <b>\$\$100,000.00</b> (if applicable, complete Box 15 below, Infor Distribution Code(s) and provide copy of W-9
5. Select the applicable type of Non-Consultant Agreement: <input type="checkbox"/> Cost Share <input type="checkbox"/> Water Transfer <input type="checkbox"/> Grant/Revenue* <input type="checkbox"/> MOU <input type="checkbox"/> Historical <input type="checkbox"/> Utility Relocation <input type="checkbox"/> City/County/Agency <input checked="" type="checkbox"/> Other/Misc.: <u>REIMBURSEMENT</u> <small>*(For Safe Clean Water &amp; Natural Flood Protection Grants &amp; Partnerships Program, refer form FC 1880)</small>	5.a. If Grant/Cost Share (Select one): <input type="checkbox"/> Payable <input type="checkbox"/> Receivable 5.b. Project Budgeted, if applicable: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, is it a Capital Project? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 5.c. Is Agreement Budgeted, if applicable <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6.a. Execution Date, if applicable: 6.b. Agreement Term Start Date: July 1, 2022 6.c. Agreement Term End Date: July 1, 2023	7. <input type="checkbox"/> Agreement Approval Request (FC 1778) <input checked="" type="checkbox"/> Original Signed Copies of Agreement Required <input type="checkbox"/> Copy of W-9, if cost is applicable <input checked="" type="checkbox"/> Other: <u>FC 1699</u>
8. <input type="checkbox"/> COO or Equivalent <input type="checkbox"/> CEO Authorized <input checked="" type="checkbox"/> If Board Authorized, provide Agenda Date and Item No., if applicable: Agenda Date:                      Item No.	9. Second Party/Coordinating Agency/Payee: <b>CITY OF SAN JOSE</b>
10. Contact Person (Name): <b>MICHELLE MULLANE</b> Email: <a href="mailto:michelle.mullane@sanjoseca.gov">michelle.mullane@sanjoseca.gov</a>	11. Address: <b>San José Municipal Water System, City of SJ Environmental Offices, 3025 Tuers Rd, San Jose, CA 95121</b>
12. Phone: <b>408-794-6768</b>	13. Project Manager/Originator (Name/Extension): <b>DAVID TUCKER, 3203</b>
14. Deputy Officer (Name/Extension): <b>VINCENT GIN, 2633</b>	

**ROUTE VIA DOCUSIGN**



# NON-CONSULTANT AGREEMENT REVIEW AND APPROVAL

(DO NOT USE FOR CONSULTANT AGREEMENTS)

FC 1413 (05-05-22)

(FOR USE WITH CEO APPROVED, NON-CONSULTANT AGREEMENTS/AMENDMENTS AND MOU'S UNDER \$225K)

Page 2 of 2

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4. Any inquiries regarding invoices and payment must be directed to Accounts Payable: [agreementinvoices@valleywater.org](mailto:agreementinvoices@valleywater.org)

15.	Infor Distribution Code(s)						TOTAL AMOUNT
Note: If you have more than one distribution code and/or you need to encumber by different Budget Years, complete the Distribution Worksheet and include in DocuSign routing. You will choose one (1) of the following: 1) Split; 2) Sequential; 3) Specific. The Distribution Worksheet is available in "Quick links" on the Procurement webpage <a href="https://aqua.valleywater.org/node/16965">https://aqua.valleywater.org/node/16965</a>							
LINE	BUDGET YEAR (4)	FUND (2)	ORG. (3)	ACCOUNT (5)	PROJECT/JOB NO. (8)	TASK (4)	
1	2023	61	410	6789	91101004	0000	\$100,000.00
<b>ROUTING APPROVALS – PROCEED TO NEXT PAGE</b>							
16.	ROUTE				INITIAL	DATE	COMMENTS/NOTES, IF APPLICABLE
16-1)	Unit Manager (UM): Hossein Ashktorab					7/13/2022	Note: UM is responsible for confirming the budget information listed above in Box 15 is valid prior to routing agreement/amendment for approval in DocuSign
16-2)	Assistant Officer (AO), if applicable: Kirsten Struve					7/13/2022	
16-3)	Deputy Administrative Officer (DAO) or Deputy Operating Officer (DOO) Vincent Gin					7/18/2022	
16-4)	Risk Management Administrator, if applicable: David Cahen					7/20/2022	Insurance Required: <input type="checkbox"/> Yes <input type="checkbox"/> No
16-5)	General Counsel: Anthony Fulcher					7/20/2022	
16-6)	Chief Operating Officer (COO): Aaron Baker					7/20/2022	
16-7)	Assistant Chief Executive Officer (ACEO): Melanie Richardson					7/23/2022	
16-8)	Chief Executive Officer (CEO): Rick L. Callender, Esq.					8/1/2022	
16-9)	Agreement Enactment <a href="mailto:agreementenactment@valleywater.org">agreementenactment@valleywater.org</a>				16-9.a - Agreement No.: <u>A4600Xa</u>		
16-10)	Non-Consultant <a href="mailto:nonconsultantagmts@valleywater.org">nonconsultantagmts@valleywater.org</a> . Designate the action as "Receives a Copy"						
17.	After Non-Consultant Agreement/Amendment is executed the PM (Requestor) to provide executed copies via email to Second Party/Coordinating Agency/Payee listed above in Box 9.						

**ROUTE VIA DOCUSIGN**



FC 1699 (05-05-22)

Project Manager: David W. Tucker

Extension: 3203

Date: July 5, 2022

## AGREEMENT APPROVAL REQUEST

### CAS/PB FILE NO.:

### CONTRACT NAME:

First Amendment to Master Agreement By and Between the Santa Clara Valley Water District and the City of San Jose Relating to Valley Water's Payment for City's Support Services to Valley Water's Purified Water Program.

### RECOMMENDATION:

Recommend that the CEO approve and execute the First Amendment to the Agreement Between the Santa Clara Valley Water District (Valley Water; District) and the City of San Jose for Support Services for a term from July 1, 2022 to July 1, 2023.

### EL-5 COMPLIANCE:

Board Policy EL-5.1 (adopted 12/10/19) states that, "Further, a BAO shall not make a single purchase, contract, 3rd party claim settlement of liability, or any other financial commitment in amounts greater than the following, unless authorized by the Board...5.1.3. - For any other services, supplies and equipment, and other financial commitments—The amount specified in the Board-approved budget."

Board Policy EL-5.3 (adopted 12/10/19) states that, "Further, A BAO shall not make a single purchase, contract, or any other financial commitment without a competitive procurement process, unless authorized by the Board or one of the following exemptions is applicable...5.3.2. - Financial commitments resulting from an agreement with a governmental agency or regulated utility, including revenue and cost sharing agreements as well as grant matching fund commitments. This exemption does not apply to grant applications or agreements whereby Valley Water receives federal funds."

Valley Water's Fiscal Year 2023 budget contains funding to satisfy Valley Water's financial commitment under this Agreement. Additionally, this Agreement is a financial commitment with another government agency.

### CEQA COMPLIANCE:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment

### SUMMARY:

The Purified Water Project (Project) is part of Valley Water's strategy to respond to the multi-year drought and is consistent with Board direction to expand the county's recycled water supply. Valley Water's 2040 Water Supply Master Plan (WRMP) recommends developing at least 24,000 AFY of additional potable water reuse by 2040. Valley Water has developed a Countywide Water Reuse Master Plan (CoRe Plan) that evaluated potable reuse expansion throughout Santa Clara County, including identifying options for achieving the WSMP's water reuse target.

One Project option is expansion of the Silicon Valley Advanced Water Purification Center (SVAWPC), with conveyance to the Los Gatos Recharge Ponds. Valley Water and the City of San Jose desire to negotiate in good faith to reach agreement on supplying effluent from the RWF, securing rights on City land to construct, operate and maintain an expanded SVAWPC or a separate advanced water

Contract Name: First Amendment to Master Agreement By and Between the Santa Clara Valley Water District and the City of San Jose Relating to Valley Water's Payment for City's Support Services to Valley Water's Purified Water Program.

purification center, and securing approval to discharge reverse osmosis concentrate associated with the expanded SVAWPC facilities or separate advanced water purification center into the RWF outfall.

Subsequently, Valley Water has requested City personnel to attend meetings, including negotiation sessions and meetings with pertinent regulatory agencies, and to review information related to a potential purified water project, including studies pertaining to reverse osmosis concentrate. The City anticipates it will incur certain expenses relating to these support services and Valley Water has agreed to remit adequate funds to fully reimburse the City for all costs incurred to provide the support services, as described in this Agreement.

This request is to approve the First Amendment to the original Master Agreement with the City of San Jose to provide financial support for City staff to participate in discussions supporting Valley Water's Purified Water Project. The original agreement was approved on January 27, 2022 and provided an initial budget of \$100,000, with the provision to add another \$100,000 if additional financial support was necessary. The original Master Agreement provided support through June 30, 2022.

Discussions with the City of San Jose are continuing albeit at a rate much more leisurely than originally anticipated. The First Amendment to the Master Agreement extends the time of the original agreement through June 30, 2023, while maintaining the Master Agreement's terms and conditions. The proviso to add an additional \$100,000 dollars of financial support has been maintained but only after Valley Water approval, and in advance of any City request for staff reimbursement. The City of San Jose approved the First Amendment on July 1, 2022.

**ENVIRONMENTAL JUSTICE IMPACT:**

None.

**FINANCIAL IMPACT:**

This Agreement is with the City of San José to reimburse the City for costs incurred to provide support services to develop a purified water project in San Jose. Valley Water will reimburse the City of San José up to an additional \$100,000.00 for these services through July 1, 2023. There are sufficient funds available in the Fiscal Year 2023 Water Enterprise Operations Budget to encumber these funds.

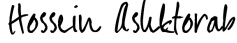
**ATTACHMENTS:**

1. Routing Form.
2. Agreement between Valley Water and the City of San Jose for Support Services.
3. First Amendment to the Agreement between Valley Water and the City of San Jose for Support Services.

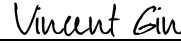
**APPROVALS:**



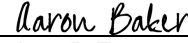
Contract Name: First Amendment to Master Agreement By and Between the Santa Clara Valley Water District and the City of San Jose Relating to Valley Water's Payment for City's Support Services to Valley Water's Purified Water Program.

DocuSigned by:  
  
E2ED6E0DC3DE4D3...  
Hossein Ashktorab  
Unit Manager  
Recycled & Purified Water Unit

7/13/2022  
Date

DocuSigned by:  
  
D0C478BB04654F1...  
Vincent Gin  
Deputy Operating Officer  
Water Utility Enterprise


7/18/2022  
Date

DocuSigned by:  
  
D0E878814FE...  
Aaron Baker, P.E.  
Chief Operating Officer  
Water Utility Enterprise

7/20/2022  
Date

DocuSigned by:  
  
50F0F0277D54...  
Melanie Richardson, P.E.  
Assistant Chief Executive Officer

7/23/2022  
Date

DocuSigned by:  
  
C45E9A0E4F...  
Rick L. Callender, Esq.  
Chief Executive Officer

8/1/2022  
Date