



**CONSENT CALENDAR**

**Agenda Item # 3**

**AGENDA REPORT SUMMARY**

**Meeting Date:** September 11, 2018

**Subject:** Contract Amendment: Joint Sewer System

**Prepared by:** Christopher Lamm, Engineering Services Manager

**Reviewed by:** Susanna Chan, Public Works Director

**Approved by:** Chris Jordan, City Manager

**Attachment(s):**

1. Addendum No. 9 to the Basic Agreement between the City of Palo Alto, City of Mountain View and City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System

**Initiated by:**

Staff

**Previous Council Consideration:**

February 26, 2016; June 26, 2012 (Study Session); January 27, 2009

**Fiscal Impact:**

Payments to the City of Palo Alto for the projects identified were accounted for during the Sanitary Sewer Charges Rate Study adopted by City Council in July 2018

**Environmental Review:**

Categorically Exempt pursuant to CEQA Section 15302

**Policy Question(s) for Council Consideration:**

None

**Summary:**

- Addendum No. 8, approved and executed in 2016, approved the planning/design of three projects (\$6.75M) utilizing State Revolving Fund Loans (SRF)
- Due to current demand for SRF Loans, applications for design are unlikely to be approved over construction work
- Addendum No. 9 grants flexibility to seek other financing options and to utilize \$3.4M of design reimbursement from the sludge dewatering project towards the three projects

**Staff Recommendation:**

Move to approve and authorize the City Manager to execute Addendum No. 9 to the Basic Agreement between the City of Palo Alto, City of Mountain View and City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System



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### **Purpose**

Addendum No. 9 to the Basic Agreement between the City of Palo Alto, City of Mountain View and City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System.

### **Background**

The Basic Agreement between the Cities of Los Altos, Mountain View and Palo Alto for the acquisition, construction and maintenance of a joint sewer system was signed in 1968, establishing the partnership for the Regional Water Quality Control Plant (RWQCP). The agreement authorized the joint exercise of power to address the need for wastewater conveyance, treatment and disposal facilities to meet the requirements of the California Regional Water Quality Control Board. Palo Alto operates the RWQCP facilities and is responsible for making capital additions. Under the Basic Agreement, any major capital additions require consent by the three partner cities. The Basic Agreement has been amended eight times.

- Addendum No. 1, executed in 1977, authorized the construction of an advanced treatment facility.
- Addendum No. 2, executed in 1980, amended the sharing of costs of maintenance and operations to include volume of sewage and treatment levels.
- Addendum No. 3 amended the agreement to incorporate overhead costs, revised dispute resolution procedures, authorized the expansion of the plant and associated costs and adjusted capacity rights of the participating agencies.
- Addendum No. 4, executed in 1990, established an agreement on payment of Utility Revenue Refunding Bonds and associated fees, interest, debt service, and billing.
- Addendum No. 5, executed in 1992, revised the basic agreement to provide for payment of interest on any excess payment and underpayment by participating agencies.
- Addendum No. 6, executed in 1998, approved a two-phase project to rehabilitate the incinerators in accordance with the Solids Facility Plan prepared in 1995.
- Addendum No. 7, executed in 2009, approved the construction of an Ultra-Violet (UV) Treatment Project and authorized the City of Palo Alto to pursue a State Revolving Fund (SRF) loan to fund the costs of the project.
- Addendum No. 8, executed in 2016 approved the construction of a sludge dewatering facility, Load-out Facility (\$28M) and the planning/design of the primary sedimentation tanks, fixed film reactor rehabilitation, and the laboratory/environmental services building at the RWQCP (\$6.75M) utilizing State Revolving Fund (SRF) loans from the State Water Resources Control Board (SWRCB).

### **Discussion/Analysis**

The Regional Water Quality Control Plant (RWQCP) was originally constructed in 1934 for treatment of local waste and has since undergone several rehabilitations. Most of the major facilities are more



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than 43 years old and have operated under industrial service conditions. In 2012, the RWQCP conducted the Long Range Facilities Plan (LRFP) to identify projects needed to upgrade the facilities and treatment processes. The LRFP is the first comprehensive long-range plan for the plant since 1966. The LRFP utilized a process that engaged the public, plant partners and Stanford professors to update the RWQCP long-term goals, review emerging technologies, review solid and liquid treatment options, and review financial impacts. The LRFP provides the road map for the RWQCP to deal with future regulations and plan its facilities

Addendum No. 8, executed in 2016 approved the planning/design of the primary sedimentation tanks, fixed film reactor rehabilitation, and the laboratory/environmental services building at the RWQCP (\$6.75M) utilizing SRF loans from the SWRCB. However, the City of Palo Alto has found that the SRF loans for planning/design, while qualifying for such funding, are not likely to be funded due to the high demand for usage on construction ready projects. Addendum No. 8 did not give the City of Palo Alto the flexibility to seek alternative funding sources.

Addendum No. 9 removes the restriction of solely utilizing SRF loans as the funding mechanism for the \$6.75M of planning/design of the primary sedimentation tanks, fixed film reactor rehabilitation, and the laboratory/environmental services building and allows the City of Palo Alto to seek out bond financing, or other financing options. The Addendum also agrees to utilize approximately \$3.4M of project design reimbursement from the \$28M SRF design/construction loan for the sludge dewatering and Load-out Facility project towards the \$6.75M of planning/design costs needed.

### **Options**

- 1) Move to approve and authorize the City Manager to execute Addendum No. 9 to the Basic Agreement between the City of Palo Alto, City of Mountain View and City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Sewer System

**Advantages:** Grants additional flexibility in seeking out financing options for funding design of capital improvements at the RWQCP

**Disadvantages:** None

- 2) Do not approve the Addendum

**Advantages:** None

**Disadvantages:** Not approving the Addendum would delay projects identified in the Long-Range Facilities Plan



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**Recommendation**

The staff recommends Option 1.

**ADDENDUM NO. NINE 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. Nine (9) 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 eight times by addenda, as follows: Addendum No. One (1) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of December 5, 1977; Addendum No. Two (2) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of January 14, 1980; Addendum No. Three (3) to an Agreement By and Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of April 9, 1985; Addendum No. Four (4) to the Agreement By and Between the Cities of Mountain View, Los Altos, and Palo Alto as further amended and dated May 30, 1991; Addendum No. Five (5) to Basic Agreement Between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System, dated as of July 31, 1992; Addendum No. Six (6) to Basic Agreement Between the City of Palo Alto, the City of Mountain View, and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of March 16, 1998; and Addendum No. Seven (7) to Basic Agreement Between the City of Palo Alto, the City of Mountain View, and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Sewer System dated as of April 15, 2009; Addendum No. Eight (8) to the Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction, and Maintenance of a Joint Sewer System dated as of October 17, 2016 (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 agreed in Addendum No. Eight (8) 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 agreed to provide for the sharing of costs associated with the Projects through State Revolving Fund (“SRF”) loans from the State Water Resources Control Board (“SWRCB”). Palo

Alto was authorized to seek a SRF loan for a maximum amount of \$6.75 million for planning/design work for three of the projects (primary sedimentation tanks, the fixed film reactors, and the new laboratory/Environmental Service building). However, due to the current statewide demand for SRF funding, SRF applications for planning/design work are unlikely to be given priority over applications for construction work. Therefore, Palo Alto needs the flexibility to use various financing options including SRF, bond financing, or other financing options, to fund the planning/design work for the Projects identified in Addendum No. Eight (8).

C. Addendum No. Eight (8) also authorized Palo Alto to seek a SRF loan for a maximum amount of \$28 million for the design and construction of the sludge dewatering and load-out facility, which Palo Alto was granted. Prior to the receipt of the SRF loan for design, Palo Alto utilized the annual minor capital budget funded by the Parties to fund the planning and design costs for the Sludge Dewatering and Load-out Facility Project with the intent to reimburse the minor capital budget once the SRF loan funds were received. Now that Palo Alto has received the SRF loan funds for the design of the sludge dewatering and load-out facility (approximately \$3.4 million), the Parties desire to use this funding reimbursed to the minor capital budget for initial funding of planning and design for the primary sedimentation tanks rehabilitation, the fixed film reactors (or other secondary process) upgrades, and the new laboratory/Environmental Service building.

D. The Parties desire to address the funding mechanism for the remainder of the design costs for the primary sedimentation tanks rehabilitation, the fixed film reactors (or other secondary process) upgrades, and the new laboratory/Environmental Service building, and reserve for a future amendment to the Basic Agreement the financing plans for construction of these projects.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Addendum No. Nine (9), the Basic Agreement is hereby amended, as follows:

**Section 1.** Paragraph 38 of the Basic Agreement is hereby amended 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 (or other secondary process) upgrades, 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”) or other project financing (i.e. utility revenue bonds) to fund the costs of the Projects. The maximum amount of the planning/design financing sought for the planning/design of the primary sedimentation tanks, the fixed film reactors (or other secondary process) upgrades, and a new laboratory/Environmental Service building will be \$6.75 million. Construction financing of these three projects would be approved by the Parties through a future amendment to the Basic Agreement.

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 secure the funding necessary for repayment of the SRF loan, operations, and/or maintenance of the Projects, following any appropriate process executed under California Constitution article XIII C and D (Proposition 218).

If the SWRCB terminates its loan commitment unexpectedly following execution of the planning and/or construction contract(s) for the Projects or the Project, Palo Alto shall notify the Parties promptly. Following notification of the termination of the SRF loan commitment, the Parties shall meet in a timely manner to discuss alternative funding sources and strategies for completion of the 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 financing amount approved by Parties without prior approval of each party’s governing body. Unless earlier terminated, the obligations and responsibilities of the Parties shall commence with the execution of Addendum No. Eight (8) to the contract and be in force for the term of the SRF loan or other financing.

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

**Section 2.** Paragraph 39 is hereby added to the Basic Agreement to read, as follows:

“39. OPTIONAL FUNDING MECHANISM FOR THE PLANNING AND DESIGN OF THE PROJECTS. Palo Alto utilized the annual minor capital budget funded by the

Parties to fund the Sludge Dewatering and Load-out Facility project design, with the intent to reimburse the annual minor capital budget once the SRF loan for that project phase was received. The Parties agree that Palo Alto may use the SRF loan reimbursement funds for the Sludge Dewatering and Load-out Facility project design (soft costs only of approximately \$3.4+- million, referred to in this Section 39 as the “Reimbursement Funds”) to finance the initial planning and design costs of the three projects (primary sedimentation tanks, fixed film reactors (or other secondary process) upgrades, and a new laboratory/Environmental Service building). After the Reimbursement Funds are exhausted, any additional planning and design expenses for the three projects shall be paid by the Parties in quarterly payments in the same proportionate shares as shown on Exhibit “H” to Addendum No. Six (6) to the Basic Agreement. Once construction financing for these three projects is secured, Palo Alto may roll any remaining, yet unbilled, planning and design expenses into the debt financing instrument.

**Section 3.** All references to “fixed film reactors” in Addendum No. Eight (8) to the Contract shall be amended to read “fixed film reactors (or other secondary process) upgrades”.

**Section 4.** 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