

**MINIMUM WATER PURCHASE TRANSFER AGREEMENT
BETWEEN THE CITY OF EAST PALO ALTO
AND THE CITY OF MOUNTAIN VIEW**

This MINIMUM WATER PURCHASE TRANSFER AGREEMENT ("Agreement") is entered into on this ____ day of November 2021, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "Mountain View"), and the CITY OF EAST PALO ALTO, a municipal corporation, whose address is 2415 University Avenue, Second Floor, East Palo Alto, California, 94303 (hereinafter "East Palo Alto"), (Mountain View and East Palo Alto hereinafter collectively "Parties" or individually "Party").

RECITALS

A. WHEREAS, Mountain View and East Palo Alto purchase drinking water from the San Francisco Regional Water System, under the terms of the *Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County*, adopted in 2009 and as amended ("Water Supply Agreement"). As part of the Water Supply Agreement, Mountain View and East Palo Alto each have an individual supply guarantee ("Supply Guarantee"), and Mountain View has a Minimum Annual Purchase Quantity ("Minimum Purchase"); and

B. WHEREAS, in 2017, Mountain View transferred one (1.0) million gallons per day ("MGD") of Mountain View's Supply Guarantee to East Palo Alto in exchange for a one-time payment of Five Million Dollars (\$5,000,000). At the time of the 2017 transfer, the Water Supply Agreement did not allow for transfers of Minimum Purchase among the Wholesale Customers, as defined below. Since that time, an amendment to the Water Supply Agreement has been negotiated that, if approved, will allow future combined transfers of Minimum Purchase and Supply Guarantee between Wholesale Customers that have Supply Guarantees ("2021 Amendment"); and

C. WHEREAS, in conjunction with consideration of the 2021 Amendment, Mountain View and East Palo Alto have proposed that the Parties to the Water Supply Agreement, Wholesale Customers, and the City and County of San Francisco ("San Francisco"), approve, in advance, conversion of the 2017 Supply Guarantee transfer from Mountain View to East Palo Alto into a Supply Guarantee transfer that includes a Minimum Purchase transfer of up to one (1.0) MGD, in twenty-five hundredths (0.25) MGD increments ("Proposed Conversion"); and

D. WHEREAS, East Palo Alto and Mountain View have approved the Proposed Conversion and authorized their City Managers to negotiate and execute an agreement

transferring twenty-five hundredths (0.25) MGD of Mountain View's Minimum Purchase to East Palo Alto; in exchange, Mountain View will provide East Palo Alto with the right of first refusal for drought water transfers conducted, pursuant to Attachment H of the Water Supply Agreement, in the same volume of approved Minimum Purchase transfers. These actions were approved by the East Palo Alto City Council on April 20, 2021 and by the Mountain View City Council on June 22, 2021; and

E. WHEREAS, this Agreement sets forth the terms and conditions negotiated between Mountain View and East Palo Alto for the Proposed Conversion and initial twenty-five hundredths (0.25) MGD Minimum Purchase transfer. Any future incremental Minimum Purchase transfers beyond twenty-five hundredths (0.25) MGD, up to one (1.0) MGD, will require approval by East Palo Alto and Mountain View, subject to any additional terms and conditions negotiated at that time in accordance with Article B, Section 4, of this Agreement. Nothing in this Agreement obligates East Palo Alto and/or Mountain View to enter into future additional incremental Minimum Purchase transfers; and

F. WHEREAS, in the event Mountain View engages in a transfer of Supply Guarantee and Minimum Purchase to East Palo Alto beyond the one (1.0) MGD contemplated in this Agreement, or any other transfer of Supply Guarantee and Minimum Purchase, the terms of the Water Supply Agreement will apply.

AGREEMENT

ARTICLE A. DEFINITIONS.

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

1. **"Agreement"** refers to this Minimum Water Purchase Transfer Agreement, by and between East Palo Alto and Mountain View.
2. **"BAWSCA"** refers to the Bay Area Water Supply and Conservation Agency.
3. **"Imputed Sales"** means payment for water above a Wholesale Customer's metered water purchases from San Francisco and below: (a) the Minimum Annual Purchase Quantity, as specified in Attachment E of the Water Supply Agreement; or (b) the Temporary Modified Minimum Annual Purchase Quantity, as specified in Attachment E-1 of the Water Supply Agreement.
4. **"Individual Supply Guarantee"** and **"Supply Guarantee"** refer to each Wholesale Customer's share of the Wholesale Customers' Supply Assurance from San Francisco, as shown in Attachment C of the Water Supply Agreement.

5. **“Individual Water Sales Contract”** refers to the contract between each Wholesale Customer and San Francisco contemplated in Section 9.01 of the Water Supply Agreement.
6. **“MGD”** refers to an average flow rate measured in million gallons per day.
7. **“Minimum Annual Purchase Quantity”** and **“Minimum Purchase”** refer to the minimum amount of water that a Wholesale Customer agrees to purchase from San Francisco annually, as specified in Attachment E of the Water Supply Agreement.
8. **“San Francisco”** refers to the City and County of San Francisco.
9. **“Temporary Modified Minimum Annual Purchase Quantity”** and **“Temporary Minimum”** refer to the minimum amount of water that a Wholesale Customer agrees to purchase from San Francisco on a temporary basis, as specified in Attachment E-1 of the Water Supply Agreement.
10. **“Water Supply Agreement”** refers to the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County, as may be amended from time to time.
11. **“Wholesale Customers”** means the twenty-six (26) water customers, identified in Section 1.02 of the Water Supply Agreement, who purchase water from San Francisco pursuant to the Water Supply Agreement.

ARTICLE B. GENERAL PROVISIONS.

1. **Term.** The terms of this Agreement are as follows:
 - a. **Effectivity.** This Agreement shall be effective upon approval by San Francisco and the Wholesale Customers representing at least two-thirds in number and seventy five percent (75%) of the quantity of water delivered by San Francisco to all Wholesale Customers during 2021 via resolutions adopted by the respective governing bodies.
 - b. **Expiration.** This Agreement shall expire concurrent with the Water Supply Agreement, which expires in 2034 unless extended by one (1) or both five (5) year extensions, authorized by Section 2.02.A and Section 2.02.B of the Water Supply Agreement. The term of this Agreement will not continue by virtue of renewal of the Water Supply Agreement pursuant to Section 2.02.C of the Water Supply Agreement unless a written amendment extending the term of this Agreement is agreed to by the Parties at that time and approved by San Francisco and the Wholesale Customers.

2. **Temporary Modified Minimum Annual Purchase Quantities.** Upon effectivity of this Agreement, the Bay Area Water Supply and Conservation Agency ("BAWSCA") will calculate a Temporary Modified Minimum Annual Purchase Quantity ("Temporary Minimum") for East Palo Alto that is equal to East Palo Alto's five (5) year average annual water purchase from San Francisco for the most recent nondrought years prior to the 2017 Individual Supply Guarantee transfer from Mountain View to East Palo Alto, plus increments of twenty-five hundredths (0.25) MGD as follows:

a. Temporary Minimum No. 1 (East Palo Alto's five (5) year average annual water purchase from San Francisco for the most recent nondrought years prior to the 2017 Individual Supply Guarantee transfer, plus twenty-five hundredths (0.25) MGD incremental transfer): $1.840 \text{ MGD} + 0.25 \text{ MGD} = 2.09 \text{ MGD}$.

b. Temporary Minimum No. 2 (prior Temporary Minimum, plus twenty-five hundredths (0.25) MGD incremental transfer): $2.09 \text{ MGD} + 0.25 \text{ MGD} = 2.340 \text{ MGD}$.

c. Temporary Minimum No. 3 (prior Temporary Minimum, plus twenty-five hundredths (0.25) MGD incremental transfer): $2.340 \text{ MGD} + 0.25 = 2.590 \text{ MGD}$.

d. Temporary Minimum No. 4 (prior Temporary Minimum, plus twenty-five hundredths (0.25) MGD incremental transfer): $2.590 \text{ MGD} + 0.25 \text{ MGD} = 2.840 \text{ MGD}$.

The calculations listed in Subsections b. through d. are included for illustrative purposes only. Any additional incremental transfer of the 1.0 MGD Minimum Purchase contemplated by this Agreement is subject to mutual approval as described in Section 4.b.

The Temporary Minimums listed above assume East Palo Alto does not receive any Minimum Purchase transfer from any other Wholesale Customer or a Minimum Purchase transfer from Mountain View in excess of the one (1.0) MGD that is the subject of this Agreement. In the event East Palo Alto receives a Minimum Purchase transfer from another Wholesale Customer, or a Minimum Purchase transfer from Mountain View in excess of the one (1.0) MGD that is the subject of this Agreement, the Temporary Minimums Nos. 2, 3, and 4 listed above are subject to change in accordance with Section 3.04 of the Water Supply Agreement, as amended, and as illustrated in the example included in Exhibit A.

3. **Payment of Imputed Sales.** East Palo Alto will not be required to pay Imputed Sales associated with any of the Temporary Minimums as set forth in Section 2 above. Mountain View will maintain responsibility for paying Imputed Sales associated with Mountain View's Minimum Annual Purchase Quantity ("Minimum Purchase"), as set forth in Attachment E of the Water Supply Agreement. Attachment E of the Water Supply Agreement will be updated to reflect Minimum Purchase transfers completed

pursuant to this Agreement as described in Section 4.c. below, adjusting East Palo Alto's and Mountain View's Minimum Purchases accordingly.

4. **Minimum Annual Purchase Quantity Transfers.**

a. **Initial Transfer.** East Palo Alto agrees to accept an initial transfer of twenty-five hundredths (0.25) MGD Minimum Purchase from Mountain View based on the conditions set forth herein.

b. **Additional Incremental Transfers.** Three (3) additional incremental transfers of twenty-five hundredths (0.25) MGD Minimum Purchase, up to one (1.0) MGD, may be mutually approved by Mountain View and East Palo Alto at any time during the duration of this Agreement. Additional terms and conditions consistent with the Water Supply Agreement may be negotiated between Mountain View and East Palo Alto and made part of this Agreement by amendment.

c. **Triggers.** For all incremental Minimum Purchase transfers pursuant to this Agreement mutually approved by East Palo Alto and Mountain View (initial or subsequent), once East Palo Alto's metered water purchases from San Francisco meet or exceed the corresponding Temporary Minimum set forth in Article B, Section 2, of this Agreement for three (3) consecutive fiscal years, one (1) increment of twenty-five hundredths (0.25) MGD of Mountain View's Minimum Purchase will be transferred to East Palo Alto.

d. **Future Transfers.** In the event Mountain View engages in a transfer of Supply Guarantee and Minimum Purchase to East Palo Alto beyond the one (1.0) MGD contemplated in this Agreement, or any other transfer of Supply Guarantee and Minimum Purchase, the terms of the Water Supply Agreement will apply.

5. **Drought Transfer Right of First Refusal.** In the event that Mountain View proposes to sell or otherwise transfer water pursuant to Attachment H of the Water Supply Agreement, East Palo Alto shall have the right of first refusal to purchase such water. This right of first refusal shall apply to the same volume of water as the total approved incremental Minimum Purchase transfer or transfers (initial and/or subsequent), at a price to be negotiated by the Parties.

///

///

///

///

ARTICLE C. NOTIFICATIONS.

Mountain View agrees to provide BAWSCA and San Francisco with a copy of this Agreement, and any future amendments to this Agreement, so that BAWSCA and San Francisco may enact the following administrative actions related to this Agreement:

1. Modify Attachment E-1 of the Water Supply Agreement to reflect relevant Temporary Minimum(s) for East Palo Alto, as approved pursuant to this Agreement.
2. Modify Attachment E of the Water Supply Agreement to reflect updates to the Minimum Purchase volumes for Mountain View and East Palo Alto pursuant to the terms of this Agreement.
3. Modify the Individual Sales Contract for Mountain View and East Palo Alto to reflect updates to the Minimum Purchase volumes pursuant to the terms of this Agreement.
4. Track the total volume of Minimum Purchase transferred by the Wholesale Customers.

ARTICLE D. MISCELLANEOUS PROVISIONS.

1. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.
2. **Amendments.** This Agreement may be amended in writing and signed by both Parties.
3. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.
4. **Headings.** The headings in this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.
5. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The

address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To MOUNTAIN VIEW: Public Works Director
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

With a copy to: City Clerk
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To EAST PALO ALTO: City Manager
City of East Palo Alto
2415 University Avenue, Second Floor
East Palo Alto, CA 94303

With a copy to: Public Works Director
City of East Palo Alto
1960 Tate Street
East Palo Alto, CA 94303

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

6. **Applicable Laws and Venue.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

IN WITNESS WHEREOF, this Minimum Water Purchase Transfer Agreement, dated November ____, 2021, between the City of Mountain View and the City of East Palo Alto, is executed.

“MOUNTAIN VIEW”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“EAST PALO ALTO”:
CITY OF EAST PALO ALTO,
a California municipal corporation

By: _____
Kimbra McCarthy, City Manager

By: _____
Jaime M. Fontes, City Manager

Attest: _____
City Clerk

Attest: _____
City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Public Works Director

City Attorney

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney

Exhibit A

Illustrations of a Transfer of a Portion of Minimum Annual Purchase Quantity from Mountain View to East Palo Alto

Scenario 3: Transferee Already Subject to Temporary Minimum Annual Purchase Requirement

Line #	Wholesale Customer	A Pre-Transfer Permanent Minimum Purchase ¹	B 5 Previous Non- Drought-Year Average Usage	C Existing Temporary Modified Minimum	D Minimum Purchase Transfer	E ² Temporary Modified Minimum Purchase ³ (TMMP)	F = A + D Post-Transfer Permanent Minimum ⁴								
1	Transferor Mountain View (1st Trans)	8.930	N/A	N/A	(0.25)	N/A	8.680								
2	Transferor Y	3.0	N/A	N/A	(1.0)	N/A	2.0								
3	Transferor Mountain View (2nd Trans)	8.680	N/A	N/A	(0.25)	N/A	8.430								
4	Transferee East Palo Alto														
5	Transfer 1: MV -> EPA	N/A	1.840	N/A	0.25	2.090 *	0.25								
6	Transfer 2: Y -> EPA	N/A	N/A	2.090 *	1.0	3.090	1.25								
7	Transfer 3: MV -> EPA	1.25	2.890	N/A	0.25	3.140 **	1.50								

¹ “Minimum Purchase” and "Permanent Minimum Purchase" are used in the tables in this Exhibit A as shorthand references to the term Minimum Annual Purchase Quantity.

² The Temporary Modified Minimum Purchase for Transfer 1 and Transfer 3 is E = B + D; the Temporary Modified Minimum Purchase for Transfer 2 is E = C + D. (See * and ** below for calculation details.)

³ If a transferee already has a Temporary Modified Minimum Annual Purchase Quantity, the additional Minimum Annual Purchase Quantity from transfer 2 is added to the transferee's existing Temporary Modified Minimum Annual Purchase Quantity, not to the transferee's 5 non-drought-year average usage.

⁴ Cumulative total, including transfers 1, 2, and 3.

⁵ Although EPA is assigned a new TMMP (3.090 mgd) due to Transfer 2, the three consecutive non-drought years requirement associated with the prior TMMP (2.090 mgd) resulting from Transfer 1 still exists.

As a result, EPA is assigned a permanent MP of 0.25 mgd in Year 5 after meeting the prior TMMP in Years 2-4, based on the example in this illustration.

* East Palo Alto Actual Purchase (MGD) in Previous Non-Drought Years

FY13-14	1.482	1st Transfer from MV starting FY17-18 (MV transferred 1mgd ISG to EPA in June 2017)
FY12-13	2.076	0.25 mgd
FY11-12	1.945	Average FY09-10 thru FY13-14
FY10-11	1.880	1.840 mgd
FY09-10	1.815	EPA's 1st Temporary Modified Minimum Purchase Would Be (MGD)
		2.090 mgd = 1.840 + 0.25

**	Year 4	2.590	3rd Transfer from MV starting Year 9
	Year 5	3.090	0.25 mgd
	Year 6	3.090	Average Year 4 thru Year 8
	Year 7	3.090	2.890 mgd
	Year 8	2.590	EPA's 3rd Temporary Modified Minimum Purchase Would Be (MGD)
			3.140 mgd = 2.890 + 0.25