

East Palo Alto Sanitary District Alternative Proposal

September 19, 2023

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Resolution No. 1349
Approving EPASD
Alternative Proposal

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**RESOLUTION NO. 1349 OF THE BOARD OF DIRECTORS
OF THE EAST PALO ALTO SANITARY DISTRICT
APPROVING LAFCo ALTERNATIVE PROPOSAL
PURSUANT TO CALIFORNIA GOVERNMENT CODE § 56861(b)(2)**

WHEREAS, a Special Meeting of the Board of Directors of the East Palo Alto Sanitary District ("District Board") was held, commencing at 6 pm on September 13, 2023, via Zoom, with a quorum of the directors present and participating in the meeting; and

WHEREAS, on November 10, 2022, the City of East Palo Alto ("City"), submitted an initial application to the San Mateo Local Agency Formation Commission ("LAFCo"), proposing the establishment of the East Palo Alto Sanitary District ("District") as a subsidiary district of the City; and

WHEREAS, on December 8, 2022, the District Board adopted Resolution No. 1327 memorializing its objection and opposition to the City's initial application; and

WHEREAS, the City's application was duly processed and became a Proposal on June 15, 2023, when LAFCO issued a Certificate of Filing of the application; and

WHEREAS, the District received email notice from LAFCo that the City's application was accepted as a complete Proposal filing on June 15, 2023; and

WHEREAS, California Government Code § 56861 (b) provides that an agency has 35 days after notice of a Proposal to adopt a resolution of intention to file an alternative Proposal with LAFCo, and to so notify the LAFCo's executive officer; and

WHEREAS, the District Board has determined that filing an alternative Proposal opposing the establishment of the District as a subsidiary district of the City would best serve the interests of its rate payers, and accordingly adopted Resolution No. 1346 on July 16, 2023, stating the District's intention to exercise its right under C.G.C. § 56861(b)(2) to file an Alternative Proposal with LAFCo; and

WHEREAS, the reason for the Alternative Proposal is to align the governance structure with the District's integral role in local infrastructure, to safeguard the interests of existing ratepayers, maintain a sewer services system that has been delivering outstanding results for decades, and to ensure that the District is efficiently, capably, and democratically governed; and

WHEREAS, because the District's action in approving its Alternative Proposal has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, it is exempt from the provisions of the California Environmental Quality Act (CEQA) under Section 15061 (b)(3) of State CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the District Board hereby approves the Alternative Proposal in substantially the form as the document provided, and adopts this Resolution.

BE IT FURTHER RESOLVED that approval of the District's Alternative Proposal is found to be exempt from the requirements of CEQA because even if the Sphere of Influence amendment sought by the District's Alternative Proposal is a "project" and subject to CEQA, it is exempt under State CEQA Guidelines section 15061 (b)(3)-Common Sense Exemption as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment" because there will be no reasonably foreseeable change in the types, intensity, and manner of service within the District's geographical area as a result of any approval and because no construction or other physical alteration of the environment is proposed. Accordingly, the District Board authorizes District staff to file a Notice of Exemption with the County Clerk.

BE IT FURTHER RESOLVED that the District Board hereby authorizes the officers of this District, and each of them acting alone, to make any necessary amendments to the Alternative Proposal and ancillary documents as becomes necessary during the LAFCo process, and take all other actions as may be necessary or appropriate to carry out same;

BE IT FURTHER RESOLVED that the District Board authorizes the expenditure of up to \$15,000 dollars for any processing costs related to the District's Alternative Proposal.

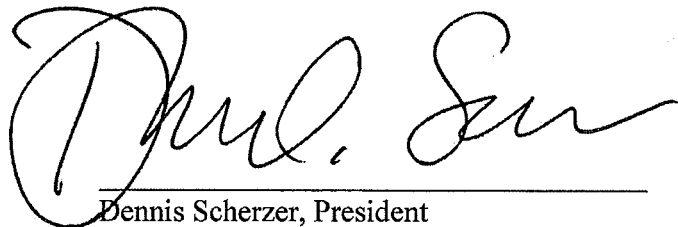
PASSED AND ADOPTED this 13th day of September, by the following vote:

AYES: Dennis Scherzer, Bethzabe Yañez, Martha Stryker, Glenda Savage

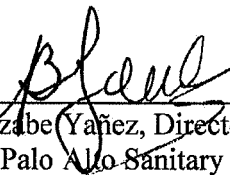
NOS:

ABSTAIN:

ABSENT: Ofelia Bello



Dennis Scherzer, President
East Palo Alto Sanitary District



Bethzabe Yañez, Director
East Palo Alto Sanitary District

I. SMLAFCo Application

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1. APPLICATION

A. GENERAL INFORMATION.

1. Nature of proposal.

See Exhibit A-1.

2. Landowners or public agency.

See Exhibit A-2.

3. Reasons for proposal.

See Exhibit A-1.

4. Consent of landowners.

See Exhibit A-2.

5. Estimated acreage.

See Exhibit A-3.

B. SERVICES

1. Affected entities.

List the name or names of all existing cities and special districts whose service area or service responsibility would be altered by the proposed change of organization or reorganization.

See Exhibit A-1.

2. Affected services.

List all changes to the pattern of delivery of local services to the affected area. For each service affected by the proposed change(s) of organization, list the present source of service (state "none" if service is not now provided), the proposed source of service and the source of funding for construction of necessary facilities (if any) and operation. Example is given on the first two lines of the space provided for your response.

See Exhibit A-1, Exhibit B-2.

C. PROJECT PROPOSAL INFORMATION.

1. Proposed area.

See Exhibit A-1.

2. Present and planned land uses in the area

Describe the present land use(s) in the subject territory.

See Exhibit A-3.

3. Use of adjacent lands.

See Exhibit A-3.

4. Additional development resulting from reorganization.

Will the proposed change of organization result in additional development? If so, how is the subject territory to be developed?

See Exhibit A-1, C.

5. General plan designation(s).

What is the general plan designation of the subject territory?

See Exhibit A-3.

6. Existing zoning.

What is the existing zoning designation of the subject territory?

See Exhibit A-3.

7. Approvals already obtained.

What pre-zoning, environmental review or development approvals have already been obtained for development in the subject territory?

See Exhibit A-4.

8. Approvals needed.

What additional approvals will be required to proceed?

See Exhibit A-4.

9. Items subject to State Lands Commission jurisdiction.

Does any portion of the subject territory contain any of the following --agricultural preserves, sewer or other service moratorium or wetlands subject to the State Lands Commission jurisdiction?

See Exhibit A-4.

10. Potential for new development.

If no specific development projects are associated with this proposal, will the proposal increase the potential for development of the property? If so, how?

See Exhibit A-1, Exhibit C.

II. Plan for Providing Services

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2. PLAN FOR PROVIDING SERVICES

1. Services.

Enumerate and describe the services to be extended to the affected territory.

See Exhibits B-2, B-3, C-1.

2. Scope of services.

Describe the level and range of those services.

See Exhibits B-2, B-3, C-1.

3. Timeline of offering services.

Indicate when those services can feasibly be extended to the affected territory.

See Exhibits A-1, B-2, B-3, C-1.

4. Planned improvements.

Indicate any improvements or upgrading of infrastructure or facilities such as structures, roads, sewer or water facilities, or other conditions to be imposed or required within the affected territory. Describe in detail, the size, location, and capacity of new infrastructure that will be necessary to provide service.

See Exhibits B-2, C-1.

5. Financial arrangements for construction and operation of services.

Describe financial arrangements for construction and operation of services extended to the affected territory (Attach proposed operations budget if available). Will the territory be subject to any special taxes, charges or fees? (If so, please specify.)

See Exhibits A-1, C-2.

6. Necessity of proposal.

In as much detail as required to give a clear explanation, explain why this proposal is necessary at this time.

See Exhibit A-1.

III. Sphere of Influence Amendment

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3. SUPPLEMENT SPHERE OF INFLUENCE AMENDMENT APPLICATION

1. Please identify the agencies involved in the proposed sphere of influence change(s)

See Exhibit A-1.

2. Describe the district's/agency's current sphere of influence:

See Exhibit A-1.

3. What type of Sphere Amendment is the application requesting?

See Exhibit A-1.

4. Provide a description narrative of the following factors of consideration as outlined in Government Code Section 56425. (If additional room for response is necessary, please attach additional sheets to this form.)

4.1. Present and planned land uses.

See Exhibit B-3.

4.2. Present and probable need for public facilities and services

See Exhibit B.

4.3. Present capacity of public facilities and adequacy of public services provided by the agency

See Exhibits A-1, B, C.

4.4. Social or economic communities of interest

See Exhibits A-1, B-2.

4.5. Present and probable need for services to disadvantaged communities

See Exhibits A-1, B-2.

5. If the sphere of influence amendment includes a city sphere of influence change, provide a written statement of whether or not agreement on the sphere change between the city and county was achieved as required by Government Code Section 56425. In addition, provide a written statement of the elements of agreement (such as, development standards, boundaries, zoning agreements, etc.) (See Government Code Section 56425).

N/A.

6. If the sphere of influence amendment includes a special district sphere of influence change, provide a written statement that includes: (a) specifying the function or classes of service provided by the district(s) and (b) specifying the nature, location and extent of the functions or classes of service provided by the district(s). (See Government Code Sections 56425(i) and 56425(j)).

See Exhibit A-1.

For any sphere of influence amendment either initiated by an agency or individual, or updated as mandated by Government Code Section 56425, the following service review information is required to be addressed in a narrative discussion, and attached to this supplemental form (See Government Code Section 56430):

- a. Growth and population projections for the affected area.

See Exhibit A-3.

- b. Location and characteristics of disadvantaged unincorporated communities within or contiguous to the sphere of influence.

See Exhibits A-1, A-3, B-2.

- c. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, including those associated with a disadvantaged unincorporated community.

See Exhibits A-1, B.

- d. Financial ability of agencies to provide services.

See Exhibits A-1, B-1, C-1.

- e. Status of, and opportunities for, shared facilities.

See Exhibits A-1, A-3.

- f. Accountability for community service needs, including governmental structure and operational efficiencies.

See Exhibits A-1, B-2.

Narrative Exhibits to EPASD Alternative Proposal

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EXHIBIT A – THE PROPOSAL

Exhibit A-1: The Alternative Proposal.

This is an alternative proposal to the City's proposal to establish the East Palo Alto Sanitary District ("District") as a subsidiary district of the City of East Palo Alto ("City") (LAFCo File No. 2209) ("City Proposal"). The District's alternative proposal is to: (1) retain the District's current governance model; (2) amend its Sphere of Influence (SOI) to be coterminous with its geographic service boundaries; and (3) remove the District's territory from the SOI of the West Bay Sanitary District (WBSD) ("Alternative Proposal"). The Alternative Proposal is necessary to preserve the existing governance structure of the District; align the District's SOI with its service area, safeguard the interests of existing ratepayers, maintain a sewer services system that has been delivering outstanding results for decades, and ensure the District is efficiently, capably, and democratically governed.

Background.

Since 1939, the District has provided sanitary sewer service to an estimated population of 26,622 located in the City and Menlo Park. The vast majority of connections served by the District are residential (3,800 out of 4,155). The remaining 355 are commercial and/or industrial. The District's collection system is well-maintained and has sufficient capacity to handle average dry weather flow and even peak wet weather flows for existing customers. The District itself is a well-run, fiscally sound public agency with a highly qualified staff and a duly elected Board of Directors.

In recent years, there has been substantial interest in developing the territory served by the District. In 2017, without consulting the District¹, the City of East Palo Alto issued a General Plan that contemplated construction of 825 residential units, and another 4 million sq. ft. of commercial development. Although the City's consultant was familiar with the District's collection system, the Environmental Impact Report ("EIR") for the City's General Plan incorrectly concluded that the City's extensive plan for new development would have "no significant impact" on the District's system.

The City's conclusion is wrong. While the District's collection system can handle current needs and some future growth, the development contemplated by the City's General Plan requires a major expansion.²

Since the City failed to conduct the proper analysis to determine what additional capacity would be required to implement its General Plan, the District took it upon itself to: (1) identify the infrastructure needed to expand the capacity of its collection system to accommodate the City's planned development; and (2) determine the cost of constructing the necessary infrastructure. To that end, the District developed a

¹ See Exhibit C-1 for more detail.

² See *id.*

thoughtful and well-researched expansion plan based on several engineering assessments, including an extensive study of the District's hydraulic capacity and a proposed plan to expand capacity to accommodate the proposed new development ("Expansion Plan").³ The District also conducted a capacity study to determine the cost of expansion and establish appropriate connection fees for new users to buy into the system. ("Connection Fees"). To fund the Expansion Plan, the District plans to supplement the Connection Fees with a portion of its reserves. And to minimize financial shock to prospective developers,⁴ the District contemplated various financing options that included: (1) use of the District's reserve funds; (2) Mello-Roo tax programs; (3) federal grants; (4) rate increases; and (5) the possibilities of both a phased and "buy-in" approach.⁵

Despite these efforts, the City and a group of developers are unhappy with the calculated Connection Fee and have taken the position that the Expansion Plan should be primarily paid for through rate increases to existing users. To accomplish that objective, the City submitted its Proposal to establish the District as a subsidiary District of the City so it, not the District's duly elected Board, would have the power to make decisions about rates.⁶

As part of its Expansion Plan, the District has explained to the City that burdening existing ratepayers with costs necessitated by new development is a violation of California Constitution, Article 13D, Section 6b ("Prop 218"), which forbids the District from charging rates that exceed the cost of providing sewer service. Despite that, and in recognition of the burden that the Connection Fees impose on developers, the District has made many attempts to collaborate with the City to develop equitable financing options for developers.⁷ Unfortunately, the City has consistently refused to meaningfully engage with the District on key issues related to the expansion, and has unilaterally—

³ See Exhibit C-1.

⁴ Financing via connection fees was a result of thoughtful, informed assessment by the District that happened over time. (See, e.g., District Board Meeting Agenda dated August 17, 2022, included as [Attachment 1](#), at p. 4 (approving hiring a financial consultant to enable "informed decisions").)

⁵ The District also considered imposing a more significant cost on ratepayers; however, it concluded that the costs of the Expansion Plan were not driven by current customers, and thus should not be passed down through service rates. (See Government Financial Strategies Memorandum to EPASD re: Financing Sanitary System Infrastructure, dated December 14, 2022, included as [Attachment 2](#), at p. 4; see also District Survey dated July 2022, included as [Attachment 3](#) (exploring the possibility of rate increases to fund infrastructure costs and finding that the majority of surveyed ratepayers strongly opposed this measure).)

⁶ Attempts by City leadership to disempower the local community by taking control of the District are not new. In fact, it required two public votes to incorporate the City in 1983 – the first ballot failed in large part because voters refused to dissolve the District into the City. See *African American and Hispanic Communities in East Palo Alto*, a Wildflowers Institute Report (2003) ("Wildflowers Institute Report"), linked [here](#), and included as [Attachment 4](#); see also *From Crisis to Solutions: A Case Study of East Palo Alto's Water Supply*, Fran M. Layton, Allison A. Johnson, Winter 2019, linked [here](#), and included as [Attachment 5](#), at p. 6.

⁷ See Exhibit C-2.

and in contravention of LAFCo's recommendation in its most recent Municipal Services Review ("MSR")— withdrawn from the interjurisdictional discussions with the District, choosing instead to attempt to dissolve the District Board and empower itself to make all decisions for the District.

Fortunately, the Connection Fees set by the District did not deter conscientious developers, many of whom have applied for and received "Will Serve" letters and, in some instances, have begun construction.⁸ This fact directly contradicts the City's claim that the District has imposed a de-facto development ban in the City.⁹

The City (and the developers it is speaking for) contends that the District's Connection Fee is too high. But the connection fee calculated by the City is based on outdated, poorly contextualized data that wrongly concludes that the District needs to expand its system to accommodate existing customers. That conclusion is demonstrably wrong and is nothing more than a thinly veiled attempt by developers to impose the costs of adding capacity to the District's system on existing ratepayers in violation of Proposition 218. The City also concedes that it plans to outsource operations to a third party and that the cost of that franchise fee will also be passed on to ratepayers.

What the City proposes will necessarily lead to significant rate increases.¹⁰ The increases will be imposed on the District's customer base, which is predominantly Black and/or Hispanic and includes many low-income ratepayers,¹¹ including a substantial population that meets LAFCo's definition of disadvantaged community.¹² In addition to being economically disadvantaged, the California Environmental Protection Agency concluded that East Palo Alto is the City most burdened by pollution in all of San Mateo County.¹³ It is no wonder then that the District has taken great care to safeguard the stability of its rates. There is a special irony in asking disadvantaged, low-income ratepayers who are already at risk of imminent displacement, and are uniquely

⁸ See generally, Exhibit C.

⁹ The City was also aware that the developers were routinely proceeding with capital projects without contacting the District for sewer service permits. (See, e.g. Intergovernmental Committee Minutes, dated July 23, 2020, included as Attachment 6 ("Director Yanez expressed the ongoing concern of the Board that prospective developers are not making initial contact with the District to obtain sewer service permits before undertaking construction projects."))

¹⁰ As explained above, the City's proposed budget for development-related improvements is based on inaccurate and incomplete findings, and severely underestimates the financial burden of accommodating large scale development. (See *infra*, Exhibit B-2.) Because the City fails to account for many significant expenses, and uses flawed data, the funds it would assess via capacity charge fees would account for only a fraction of the real cost of new construction, thereby making rate increases for the ratepayers inevitable.

¹¹ The District's ratepayers experience lower life expectancy, income levels, and educational attainment when compared to the rest of San Mateo county—the 4th wealthiest county in the country. (See City's General Plan, included as Attachment 7, at p. 7-1.)

¹² See Exhibit B-3.

¹³ See California EPA Map, available at this [link](#) (CalEPA conclusion is also included as Attachment 8).

burdened by pollution, to absorb substantial rate increases in order to make development more profitable for investors.¹⁴

The District Is Best Suited To Deliver Sewer Services To The Community.

The District has been delivering exemplary sanitary sewer services to the community since 1939. A large portion of District staff are themselves District ratepayers, and residents of the City. The highly credentialed current leadership team possesses both the specialized knowledge required to efficiently run the District, and the passion to protect the integrity of its local community, including ensuring that the cost of progress is not passed on to existing ratepayers.

The District is Capably Maintained.

The District is capably and cost-effectively maintained. A 2021 hydraulics report found that the system is adequate for current residents.¹⁵ This finding has been confirmed in the real world—the District has not had a Sewer Surcharge Overflow (“SSO”) in over 16 years. That period includes the February 2023 torrential storms that caused SSO’s in many neighboring jurisdictions.¹⁶ That the District’s systems held up during that historical period of wet weather is a powerful testament to the adequacy of its existing collection system. It is also consistent with LAFCo’s own finding that the District “meets the needs of current and a portion of future demand” and provides at least an “adequate level of wastewater collection services to existing ratepayers.”¹⁷

The District is Well-Governed.

The District is thoughtfully and effectively governed.¹⁸ Its General Manager and Board President have extensive experience in providing sanitary sewer services.¹⁹ The District boasts a robust financial position and sizable reserves of some \$23 million, and has been able to maintain consistently low expenditures as compared to its general revenue.²⁰ The District’s records show that for the past several decades, it has had a clean audit, indicating that funds are spent according to established government accounting standards. The District also has exceptionally low debt obligations compared

¹⁴ The rate of return on development in the area served by the District is already favorable to investors (housing appreciation rates are 300% higher than the average in California, and even higher when compared to national averages). This further highlights the inequity the District’s policies aim to ameliorate. (See US Census Bureau Statistics compilation, included as [Attachment 9](#)).

¹⁵ See Addendum to the March 2015 EPASD Master Plan Update, Freyer & Laureta Inc., Final – April 28, 2021 (“Addendum to 2015 Master Plan”), included as [Attachment 10](#).

¹⁶ See Exhibit B-2; see also *Storms in the Bay Area Have Unleased Millions of Gallons of Untreated Sewage*, as covered National Public Radio, included as [Attachment 16](#).

¹⁷ See SMLAFCo Municipal Service Review, as adopted in June 2022, included as [Attachment 11](#) (“LAFCo MSR”), at p. 6.

¹⁸ See Exhibit B-1 for details on the District’s governance.

¹⁹ *Id.*

²⁰ *Id.*

to similar agencies, including no Other Post Employment Benefit (“OPEB”) debt. Because the District is effectively managed, it is able to keep annual ratepayer charges low; ratepayers enjoy some of the lowest rates in the region – an important factor for a disadvantaged community. Finally, the District’s internal policies are transparent, well thought out, and compliant with regulations.²¹

The City Is Not Suited To Run The District.

When LAFCo conducted its first MSR of the District in 2009, it carefully balanced the pros and cons of a potential subsidiary district reorganization and, among other things, expressed concern over a “general service” local agency (like the City) undertaking the specialized functions of a sanitary district.²² Further, Martha Poyatos, then-Executive Officer of LAFCo, identified in a memorandum “the need for regional governance to best provide water and sanitary sewer service[.]”²³ The 2009 MSR also discussed threats to community representation resulting from a potential reorganization, which would necessarily result in disenfranchisement of Menlo Park ratepayers.²⁴

Additionally, the City’s proposal to integrate the District’s OPEB liabilities with those of the City is concerning. Presently, the District carries no pension or OPEB debt, but aligning with the City—which carries a substantial amount of OPEB debt—could jeopardize the District’s present and future retirees, and adversely affect the District’s own financial stability. It’s crucial to recognize the potential consequences of these shortcomings, including their impact on the City’s budget, district employees’ retirement benefits, and the broader long-term financial implications. Merging the District with the City could also increase the bankruptcy risk of the sanitary sewer program due to a changed Altam Z Score.

Finally, the City does not possess the special qualifications required to run a sewer service, and plans to outsource operations to a third party. Given the City’s history of mismanaging public utilities, the prospects for what is currently by all accounts excellent and reliable service, are grim.²⁵

Given these evident flaws, the District’s Alternative Proposal that prioritizes the welfare of the local community, and ensures prudent, informed decision-making, was necessary.

Aligning the District’s SOI With Its Service Boundaries Is Appropriate

²¹ *Id.*

²² See Letter re: for EPASD Presentation to LAFCo re: MSR, dated June 14, 2022, included as Attachment 12, at p. 2; see also Municipal Service Review Draft Report, dated February 12, 2009, included as Attachment 13; Martha Poyatos’ Memorandum to LAFCo and 2009 Draft MSR, dated October 8, 2008, included as Attachment 14 (“Poyatos Memorandum”).

²³ See *id.*, at p. 2.

²⁴ See *id.*, pp.

²⁵ See Exhibit B-2 for more detail.

By definition, an SOI is “a plan for the probable physical boundaries and service area of a local agency.” (Gov. Code § 56076.) The District’s current SOI is a zero sphere, which means the District should be dissolved. As explained in more detail above, this is not an appropriate outcome because the District is a well-run district with the lowest rates in the county. Rather than establishing the District as a subsidiary district, SMLAFCo should allow the District to continue to operate as it has recently and remove the zero sphere designation.

SMLAFCo should also remove the District geographical area from the WBSD SOI. According to the MSR adopted by LAFCo in June 2022, WBSD has no plan to expand its service area through annexation of the District’s territory.²⁶ So encompassing the District within the WBSD’s SOI is not an accurate reflection of the infrastructural reality of the two districts.

Additionally, it is LAFCo’s mission to avoid “wasteful duplication of services” (*Ceres v Modesto* (1969) 274 Cal.App.2d 545). LAFCo cannot allow overlap of spheres for two agencies providing the same services. Because, as detailed above, and in the exhibits that follow, the District is in the best position to provide effective sanitary sewer services within its current boundaries, and in fact, has been doing exactly that for decades. SMLAFCo should make the District’s SOI coterminous with its service boundaries.

Conclusion

SMLAFCo should approve the District’s Alternative Proposal. The District is demonstrably capable of providing quality sewer services to its rate-payers and properly managing the system growth necessary to accommodate new development. In contrast, the City’s Proposal will unduly burden existing rate-payers with the cost of new development which violates Proposition 218 and will increase the costs of sewer service.

²⁶ See Exhibit A-2.

**EXHIBIT A-2
SUPPORT FOR THE PROPOSAL**

Who submitted the proposal. This application was submitted by an affected public agency, the East Palo Alto Sanitary District, by resolution.

Support for the proposal. The adjacent Sanitary District is not in support of a reorganization of the District without its concurrence.²⁷

²⁷ See LAFCo MSR, included as Attachment 11, at p. 6 ("WBSD is ... not willing to initiate a reorganization ... in the absence of EPASD concurrence.")

EXHIBIT A-3 SUBJECT TERRITORY

Subject territory.

The territory subject to the District's Proposal is approx. 1.84 sq. miles. Its general location is coterminous with the boundaries of the District which include a majority of the City of East Palo Alto ("City") and a portion of the City of Menlo Park ("Menlo Park") bounded by the East Palo Alto/Menlo Park Boundary, San Francisco Creek and Menalto Avenue. The Subject Territory Map is included as Attachment 15.

Present and planned uses in the area.

While most of the District's service area is in the City, there is also a portion in Menlo Park. Land use designations are primarily single family residential and multi-family residential with a small amount of commercial. The District is fairly well urbanized so there is very little agricultural land or open space.

The portion of the District's service area in the City is characterized by a primarily urbanized landscape, interspersed with open spaces, marshlands, and vacant tracts. Residential land use dominates and is comprised primarily of single-family homes, with some multi-family housing. Commercial and office activities occupy roughly 6% of the land, with a noteworthy blend of functions occurring where residential neighborhoods adjoin University Avenue's retail establishments and the Ravenswood 101 Shopping Center. Institutional uses, public facilities, parks, and recreational spaces collectively encompass about 10% of the city's land area. A portion of the District's service area in the City is vacant. The unoccupied areas are primarily concentrated along Bay Road within the 350-acre Ravenswood Business District / 4 Corners Transit Oriented Development Specific Plan (RBD). This area was previously home to industrial businesses.

The portion of the District's service area in Menlo Park is primarily residential.

Use of adjacent lands.

Lands adjacent to the subject territory are currently used as follows:

North: Baylands, Undeveloped

South: Residential (the Cities of Palo Alto and Menlo Park)

East: Baylands, Undeveloped

West: Residential and Office Park (including the City of Menlo Park & Meta)

General plan designation(s).

The City has the following General Plan designations encompassing residential, mixed use, commercial, parks, industrial, public/institutional and open Space categories: Low Density Residential (0-12 units/acre), Medium Density Residential (12.1-22 units/acre), High Density Residential (22.1-43 units/acre), Urban Residential (43.1-86 units/acre), Mixed Use Low, Mixed Use Corridor, Mixed Use High, Neighborhood Commercial, General Commercial, Office, General Industrial, Industrial Buffer, Parks/Recreation/Conservation, Resource Management and Public/Institutional.

The specific definitions of the City's General Plan designations can be found in the land use chapter of the City's Vista 2035 General Plan, included as Attachment 7.

The portion of Menlo Park that is currently served by the District has the following General Plan designations: Residential and Public/Quasi Public. The specific definitions of Menlo Park's Land Use Element of the General Plan designations can be found in the Menlo Park General Plan, included as Attachment 17.

Notably, in preparing its most recent General Plan, the City did not meaningfully coordinate with the District to plan for long-term development. Further, the City's complaint that it cannot issue permits without confirmation of capacity is misplaced. It is actually the developer's obligation to ensure the availability of capacity for increased usage of the system by payment of applicable capacity fees.

Existing zoning.

The City has the following Zoning designations: Residential Low Density (R-LD), Residential Medium Density (R-MD), Residential High Density (R-HD), Residential Urban High Density (R-UHD), Mixed Use Corridor (MUC), Mixed Use Low (MUL), Mixed Use High (MUH), Commercial General (C-G), Commercial Neighborhood (C-N), Commercial Office (C-O) Public Institutional (PI), Parks and Recreation (PR), and Resource Management (RM). The City also has specific zoning designations within the RBD Specific Plan area. The districts include the following: 4 Corners, Bay Road Central, Ravenswood Employment Center, Industrial Transition, Waterfront Office, Urban Residential, University Village (single family), Ravenswood Open Space, and Ravenswood Flex Overlay.

Definitions of the designations above can be found in the City's Development Code Title 18, Article 2, included as Attachment 18.

Definitions of the RBD zoning designations can be found in the land use section of the Specific Plan, included as Attachment 19.

The portion of Menlo Park that is currently served by the District has the following General Plan designations: Residential and Public/Quasi Public. The specific definitions

of Menlo Park's Land Use Element of the General Plan designations can be found in the Menlo Park General Plan, included as Attachment 16.

Population Trends²⁸

Historical population trends. The City's population has remained fairly static over the last two decades, fluctuating minimally from year to year. In 2000 and 2001, the City and District experienced positive growth of 1.83% and 2.47% respectively. From 2002 to 2009, the City and District experienced consistent population decline, with a combined decline in population of 8.6%. Between 2010 and 2018, there was positive growth in population of 9.2%. From 2018-2020, there has been a slight decline in population. As of 2020, based on the number of residential connections served and the average household size in the cities served, the population of the District is approximately 26,622.

Projected population. The District's growth should closely mirror the City's growth. The Association of Bay Area Governments ("ABAG") projects that the City will experience 17.7 % population growth between 2020-2040, bringing the population of the District to an estimated 31,335 by 2040.

²⁸ See LAFCo MSR, included as Attachment 11, at pp. 110-11, for source information on population trends.

EXHIBIT A-4 APPROVALS

CEQA Approvals. The Sphere of Influence Amendment ("SOI Amendment"), is not a "project" subject to CEQA as there is no potential that it will result in either a direct physical change to the environment or a reasonably foreseeable indirect change to the environment and because it is a governmental organizational or administrative activity that merely authorizes a boundary change, but will not result in any direct or indirect changes to the environment. (Public Resources Code § 21065; State CEQA Guidelines § 15378.) Even if the SOI Amendment was considered a "project" subject to CEQA, it is exempt under State CEQA Guidelines section 15061 (b)(3)-Common Sense Exemption as "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment" because there will be no reasonably foreseeable change in the types, intensity, and manner of service within the subject territory as a result of any approval and because no construction or other physical alteration of the environment is proposed. The District's Notice of Exemption is included as Attachment 20.

State Lands Commission. No portion of the subject territory contains agricultural preserves, sewer or other service moratorium or wetlands subject to the State Lands Commission jurisdiction.

Other Approvals. No other approvals are needed at this time.

EXHIBIT B-1 EXEMPLARY GOVERNANCE

1. Robust financial health.

Balanced Budget.

The District's budget generates revenues (including property tax) in excess of operating expenditures (excluding transfers); the net revenues enable the District to fund debt service, build reserves, and transfer funds to its Capital Replacement Fund for infrastructure improvements. The District's budget is transparent²⁹ and is available to the public via the District's website. Audited financial statements for FY22 reported a strong net position of \$30.12 million at the close of the most recent fiscal year, increasing by over \$1.8 million.³⁰

Clean Audits.

The District prepares an annual financial report consistent with Generally Accepted Accounting Principles (GAAP). Consistent with GAAP, each year, the auditor assures that the financial statements are "free from material misstatement, whether due to fraud or error."³¹ The audits for the past several decades have returned with no exceptions.

High Reserve Funds.

The District's reserve policy was last updated in 2019, and contemplates operating reserves equal to at least 12 months of operating expenses, as well as rate stabilization, equipment replacement, capital, emergency capital, and OPEB liability reserves.³²

Currently, the District has over \$23 million in reserve funds. Strong reserves are a testament to the District's robust financial planning and risk management. The District has been able to maintain these reserves, while continuing to efficiently meet day-to-day service needs, execute capital improvements, and comply with debt requirements. This substantial reserve reflects the District's fiscal competence, and enables the District to plan for substantial infrastructure improvements without placing the District's financial standing in jeopardy.

²⁹ LAFCo's MSR criticized the District's budget for including "contractual services" as a category. But, this is a standard category many agencies include in their budgets. For example, WBSD included a similar \$500,000 amount to "contractual services" in its 2022-23 Budget, but did not yield the same criticism from LAFCo. (See LAFCo MSR, included as [Attachment 11](#); see *also* WBSD Annual Budget for 2022-23, available at this [link](#), and included as [Attachment 21](#); EPASD Budget, included as [Attachment 22](#))

³⁰ See Audit Report for FY 2022, included as [Attachment 23](#).

³¹ See *id.*

³² See EPASD Reserve Policy, included as [Attachment 24](#).

The District only has about \$1.065 million in long term debt. Annual payments are \$153,000 which is considered low relative to revenues for typical agencies.³³

No Pension or OPEB Liability.

Since early 2022, the District has no pension or OPEB liabilities³⁴.

The City proposes to integrate the District into its CalPERS program and to utilize the District's reserves to reduce the City's long-term retirement costs. This would be a disservice to existing ratepayers who deserve to have the District's reserves used for ongoing operations and maintenance needs of the District, including the execution of the District's Capital Improvement Plan ("CIP"), which ensures that the District adequately plans for the maintenance necessary to continue to operate its collection system.

2. Transparent policy.

Current Policies.

The District maintains policies that are current and compliant with relevant regulations. The policies deal with roles and responsibilities of directors, committees and staff; conduct and conflicts of interest; general ledger and chart of accounts; and other policies and procedures related to disbursements and expenses, payroll, asset and liability accounts, financial controls, including:³⁵

- Reserve Policy
- District Code
- Brown Act Policy
- Conflict of Interest Code compliant with The Political Reform Act
- Policies Handbook for the District Board of Directors
- Travel Policy for the District Board of Directors
- Employee Handbook, updated in 2018

Board Members' Continued Education.

Board Members receive timely and regular ethics training.

³³ See *Long Term Obligations Indicators*, available at this [link](#), and included as [Attachment 25](#).

³⁴ See Audit Report for FY 2022, included as [Attachment 23](#).

³⁵ Each of these policies is included as [Attachments 24, 26, 27, 28, 29, 30, 31](#), respectively.

Form 700 Reports.

Each year, District Board Members timely disclose their investments, interests in real property and incomes by filing Form 700, which is a form required by Gov. Code. § 87203.

3. Capable leadership and personnel

The District has been well-managed by qualified personnel. Its General Manager, Akin Okupe, is a civil engineer, and an M.B.A. His sophisticated yet pragmatic approach to management, informed by decades of industry experience, has been an asset to the District and can be credited for the District's continued ability to provide cost-effective services to ratepayers.³⁶

4. Effective community outreach.

Access to information.

The Board communicates to rate payers effectively through its AB 2257 and SB 929 compliant public-facing website. The website includes information on meetings, bill paying, rates and fees, wastewater services, and financial and planning documents. The District also distributes newsletters and informs the public through public notices. When needed, the District also operates Community Workshops to foster engagement with the more complex issues impacting ratepayers.

Soliciting Feedback.

The District also puts considerable effort into soliciting feedback from ratepayers regarding its policies and procedures. Of note, in July 2022, the District sent out another survey to District customers, collecting information regarding levels of satisfaction with services offered by the District, and how amenable the ratepayers would be to rate increases that would cover expansion costs.³⁷ Not surprisingly, the vast majority of ratepayers surveyed opposed this option.

Grievance process.

If a customer is dissatisfied with the District's services, complaints may be submitted over the phone or via email. Complaints are tracked and managed by the front administrative office. Details of each complaint are recorded, information is

³⁶ See General Manager Okupe's qualifications at [this link](#), also included as [Attachment 32](#).

³⁷ See District Survey, dated July 2022, included as [Attachment 3](#) (including the following question: "In general, how willing would you be to pay more in annual sewer charges, which are collected on the property tax bill, to update and expand the City's sewer system capacity in the affected areas in order to support these development projects?"; 52% were "not at all willing," and 14% more were "not too willing").

gathered, and options for resolution are discussed at a staff level. Notably, as a result of good management practices, the District receives few complaints from its customers.

5. Inter-agency cooperation.

In order to operate more effectively the District works with neighboring agencies with the goal of providing more efficient services. As an example, in 2020, SMLAFCo suggested that District, the City, and various developers work together toward an equitable solution to finance the large scale development contemplated by the City's General Plan.³⁸ At first, it appeared the City might collaborate on solutions: in October 2020, one of the developers, Sobrato, transmitted correspondence to SMLAFCo acknowledging that "over the past few months, City and District officials and staff have demonstrated a remarkable level of diligence and commitment to working together through the Intergovernmental Committee (IGC) to discuss possible solutions and pathways for providing City-approved development projects with 'will serve' letters for essential sanitary service."³⁹ The District continued these monthly intergovernmental committee meetings with the City through 2022 to discuss issues of mutual concern. Although the City suspended these meetings in the Fall of 2022, the District would like to see them resume. As late as September 2022, the District continued to engage in active efforts to get City management to collaborate with the District on mutually agreeable options to finance the expansion of its infrastructure.⁴⁰ The City, however, did not wish to engage with the District, and instead moved forward with its plan to submit the City's Proposal.⁴¹

The District also has a track record of effectively partnering with other agencies including its participation in a multi-agency project that reconfigured San Francisquito Creek for flood control purposes and its partnership in the Palo Alto Regional Water Quality Control Plant, of which the District is one of five partners.⁴² Each of these partnerships has resulted in the availability of State funds for improving infrastructure.

³⁸ See LAFCo MSR, included as Attachment 11, at p. 4.

³⁹ See Letter from Sobrato, dated October 27, 2020, included as Attachment 51. October 27,

⁴⁰ See Yanez letter to Mayor Abrica of EPA, included as Attachment 33.

⁴¹ See Exhibit C-2.

⁴² See LAFCo MSR, included as Attachment 11, at p. 127.

EXHIBIT B-2

SERVICES OFFERED

Since 1939 the District has provided sanitary sewer service to approximately 26,622 residents, and a range of office, retail, public/ institutional, and other uses in the East Palo Alto and Menlo Park area.⁴³ The District operates a gravity-based collection system that complies with State Water Resources Control Board regulations.⁴⁴ The District is a well-run sewer district with sufficient capacity both to satisfy present needs, and accommodate some new development.

Sewer system is well managed.

Description of system.

The system consists of approximately 30 miles of gravity sewer lines; approximately 70% are 6 inches in diameter and the remainder range from 8 to 24 inches in diameter.⁴⁵ Because the lines are powered by gravity, there are no pump stations. The trunk line contains a siphon beneath San Francisquito Creek between manholes T15 and T14. The collection system also includes 15 drainage basins.⁴⁶

Sections of the system have been replaced; however, most of the original pipelines and manholes remain in service.⁴⁷ The new manholes are precast, while the original manholes were mostly constructed of brick and mortar.⁴⁸ The original pipelines utilized vitrified clay pipe (VCP), while more recent pipe replacements employ sturdy plastic options such as PVC or HDPE.⁴⁹

All pipes within the collection system lead to the Palo Alto Regional Water Quality Control Plant (RWQCP), where the District's flows undergo treatment before being discharged into the San Francisco Bay.⁵⁰ RWQCP records encompass the total wastewater flow for the District, measured via the District's meters.⁵¹ Peak daily flows typically occur between December and March, during winter, while lowest daily flows are observed from September through November.⁵²

The dry weather flow capacity of RWQCP stands at 38 MGD. An agreement between the District and RWQCP ensures that the District is entitled to 7.63% of

⁴³ See LAFCo MSR, included as Attachment 11, at p. 3.

⁴⁴ See e.g., Addendum to 2015 Master Plan, included as Attachment 10, at p. 1.

⁴⁵ See LAFCo MSR, included as Attachment 11, at pp. 106-07.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

RWQCP's average dry weather capacity—equivalent to 2.9 MGD. In 2020, the District recorded an average daily wastewater flow (ADWF) of 0.61 MGD, or approximately 21% of its allotted treatment capacity.⁵³

No SSO overflows.

The District's high quality of service is evidenced by the fact that ***it has not experienced any sanitary sewer overflows ("SSO") for at least 16 years***, including during the February 2023 torrential storms, which caused substantial overflows in even the most well-funded and developed districts in the Bay Area.⁵⁴

To support its argument that absorption of the District is necessary, the City' Proposal asserts that the District's system is operationally challenged, and/or would not be able to handle peak wet weather conditions.⁵⁵ As is obvious from the above, this assertion is unfounded, and directly belied by public records to the contrary. Further, while the District's systems are amply capable of serving ratepayers needs without surcharging, the City's Plan ignores engineering recommendations and compromises on structure, making surcharges not just likely, but inevitable.⁵⁶

Sewer System Management Plan.

The District has also completed a Sewer System Management Plan (SSMP) to guide long term operations (the Plan has recently been updated to remain compliant with new regulations).⁵⁷ The plan was adopted in 2015 and updated in 2021. Although there have not been SSOs in over 16 years, the District worked hard to identify areas vulnerable to surcharging and SSOs. The SSMP includes a robust Operations & Maintenance Program which includes proactively monitoring, maintaining, and improving the condition of the collection system infrastructure⁵⁸. The SSMP takes into account the ongoing changes to the capacity of the system, and continuously updates demand assumptions to be consistent with the City's most recent General Plan update.

An example of the District's maintenance efforts is the recently completed CCTV-monitoring project which was launched to aid in fully assessing the infrastructure needs of the District, and enable a more accurate Connection Fee calculation. The project helped identify with certainty and record any sections of the District's system that were in need of upgrades and maintenance.⁵⁹

⁵³ *Id.*

⁵⁴ See Hildebrand, *Capacity Charge Study*, September 7, 2022, included as Attachment 41.

⁵⁵ See The City's Proposal, included as Attachment 34, pp. 12-13.

⁵⁶ See EPASD Letter to LAFCo in response to the City's supplemental communications relating to its Proposal, included as Attachment 35.

⁵⁷ See Sewer System Management Plan, revised August 12, 2021, as adopted by District Resolution No. 1282 on September 2, 2021, included as Attachment 36 (Resolution embedded).

⁵⁸ *Id.*, at p. 8.

⁵⁹ See Sierra West CCTV Report, dated October 31, 2022, included as Attachment 37.

Because of the District 's strong financial position, it is capable of funding all current repairs needed, and has been accordingly allocating its revenue and reserve funds. Notably, the District does not repair or replace pipelines that are sound and functioning in good order. Most CIP expenditures relate to "point repair" projects that address system-wide needs for replacement and repair.

Sewer Rates.

The District's current rates are \$600/ EDU.⁶⁰ In determining the rates, the District used the 2019 Sewer Rate Study, which made projections that encompass the following agency needs: (1) projected sewer system operating and maintenance expenses; (2) fees related to RWQCP wastewater treatment operations; (3) financing costs for rehabilitating and upgrading the RWQCP's wastewater treatment facilities; (4) provision of an ongoing funding stream for the repair, replacement, and/or increased flow capacity for the District's sewer collection system infrastructure; and (5) maintenance of the long-term financial sustainability of the District.⁶¹

Because the District has been generating revenue in slight excess of its expenses in the past few years, it has not raised rates for customers. However, the District has established a cut-off point consistent with financial yield management recommendations, at which it will next increase sewer rates.⁶²

Sufficient Capacity for New Growth.

The current capacity allotted to the District at RWQCP is 2.9 million gallons per day. The District's average dry weather flow is only 0.61 million gallons per day, or 21% of total current capacity which means the treatment plant has ample capacity for new growth.⁶³ The District's collection capacity has similarly not been exhausted, and can accommodate additional development even during peak wet weather before requiring expansion.⁶⁴

The District is Best Positioned to Manage a Sewer Utility.

High quality, low cost services have been offered to ratepayers since 1939 and, as described in the recent Bartle & Wells Rate Study ("B&W Rate Study"), will continue to be provided without an immediate rate increase to existing ratepayers beyond routine annual CPI increases. Indeed, the District, as currently operated, fits all of the criteria

⁶⁰ See SMLAFCo MSR, included as Attachment 11, at pp. 120-21.

⁶¹ See *Bartle & Wells Rate Study*, included as Attachment 38.

⁶² See EPASD Board Presentation re: Municipal Service Review, included as Attachment 39.

⁶³ See Sewer Trunk Line Presentation to the Board, dated February 18, 2021, included as Attachment 40.

⁶⁴ *Id.*; see also See Hildebrand, *Capacity Charge Study*, September 7, 2022, included as Attachment 41.

(and more) that the City included in its Request for Proposal provided alongside its LAFCo application for potential sewer management contractors.⁶⁵

In contrast, the City proposes that wastewater collection services be provided via a private entity procured via an RFP. The District has reviewed the scope of services of the City's RFP and can confirm that it currently provides all of the listed services, and, per the B&W Rate Study, should be able to continue so doing with only marginal CIP rate increases.⁶⁶ But, if the City's Proposal is approved, the subsequent procurement by the City of wastewater collection services from a private entity will require an accelerated rate increase to ratepayers as was the case when the City took over the provision of water services to its residents. The City is also proposing an unrealistic connection fee of close to \$6,000 based on an outdated and inaccurate calculation that fails to take into account the full \$64.7+ million necessary for system expansion, \$40 million of which would be exclusively attributable to new development.⁶⁷

Further, the City's recent record for running a utility is concerning.⁶⁸ In 2001, it contracted its water services out to a third party vendor.⁶⁹ With franchise fees charged by the City, and additional fees charged by the contractor in order to yield profit, the City's water rates spiked significantly, harming economically vulnerable ratepayers.

⁶⁵ See City's Letter to LAFCo, dated March 23, 2023, included as Attachment 42.

⁶⁶ See B & W Rate Study, included as Attachment 38.

⁶⁷ City staff acknowledged that previous capacity calculations, at a minimum, were likely too low considering the substantial density associated with the proposed development. (See EPA City Staff Report for September 6, 2022, City Council Meeting, included as Attachment 43, at p. 84)

⁶⁸ See District's Letter to LAFCo, dated December 22, 2022, included as Attachment 44.

⁶⁹ See *id.*

EXHIBIT B-3 COMMUNITY INTERESTS

Community Demographics.

The District serves a predominantly Black and Latino, and over 40% immigrant, population.⁷⁰

Disadvantaged Communities.⁷¹

According to the Department of Water Resource's Disadvantaged Communities mapping instrument, there are no communities within or contiguous to the District that meet the definition of a disadvantaged unincorporated community. However, there is a single Block Group (060816121002) within the City's incorporated territory to the west of Highway 101 that meets the definition of disadvantaged. The area has an estimated population of 2,232 with a median household income of \$45,731.

Disenfranchisement of Menlo Park Residents.

If the City's Proposal is approved it would result in the disenfranchisement of ratepayers residing in the City of Menlo Park.⁷² Under the City's proposal, individuals from Menlo Park would be ineligible to be elected to the City of East Palo Alto's Council, limiting their representation and participation in local governance. The City's assurance of community outreach⁷³ is an insufficient substitute, as outreach efforts fall short of guaranteeing equitable involvement of Menlo Park residents in shaping policies that directly affect their interests.

In contrast, the current governance structure enables all ratepayers to actively engage in leadership roles by running for positions on the District's Board. Maintaining the current framework allows for a more inclusive and participatory approach, offering a platform for Menlo Park residents to contribute to the District's decision-making processes and ensure their voices are heard.

The Lateral Replacement Program Serves the Community⁷⁴

Mindful that disadvantaged members of its community nevertheless require vital services, the District has been running its Lateral Replacement Program to help eligible ratepayers fund improvements since 1985. The program is designed both to ensure

⁷⁰ See Government Census Information, available at this [link](#), and included as Attachment [].

⁷¹ See LAFCo MSR, included as [Attachment 11](#), at pp. 150-151.

⁷² See also 2009 Draft Municipal Service Report, included as [Attachment 13](#), at p. 2. (discussing similar concerns when making MSR/ SOI determinations in 2009).

⁷³ See City's answers to LAFCo's follow up questions on its proposal in its Letter to LAFCo, dated December 22, 2022, included as [Attachment 47](#).

⁷⁴ See Sample Loan Agreement, included as [Attachment 52](#), for more detail on the District's Lateral Replacement Program.

public health and safety by assisting property owners in maintaining their sewer laterals. It has often facilitated emergency repairs due to lateral failures.

As part of this program, property owners receive loans to cover lateral repair and replacement costs which, through contractual agreement, are then repaid through increased sewer service charge (SSC) assessments collected on the SMCo property tax roll. Projected SSC revenues, identified by the District on their annual tax roll submissions are fully funded by SMCo under the Teeter Plan. SMCo, by agreement with the District, is then authorized to pursue delinquencies if they occur. The Lateral Replacement Program agreements also include a Point of Sale clause that requires that the unfunded remainder of these loans is paid whenever a property changes owners.

EXHIBIT C-1

PLANNED IMPROVEMENTS

Background

In line with best industry practices, the District has historically planned and conducted improvements at a scale that would meet projected future demands.⁷⁵ Consistent with that goal, the District has maintained capacity in its collection system for additional growth. Simultaneously, and bearing in mind the limitations of its existing sewer system, which, while more than adequate to serve current needs and more, would eventually run out of capacity, the District continued to strategize for infrastructure improvements that would allow for larger scale development.

To that end, the District retained an expert consultant to surveil the collection system using closed-circuit cameras (CCTV) to help assess the hydraulic capacity of the District's current pipeline, and make a recommendation as to how to sustainably increase capacity to accommodate substantial expansion.⁷⁶ Using these findings, and other specialized knowledge about its systems, the District developed its 2021 Master Plan Addendum.⁷⁷ This plan, which was specifically designed to implement large scale development, outlined system deficiencies precipitated by existing use, and identified proposed changes attributable only to new development, estimating corresponding costs for both.⁷⁸

The City Did Not Consult the District Before Substantially Increasing Planned Density In Its General Plan.

Notably, the City's 2017 General Plan did not account for any of the above deficiencies, and instead, published a perplexing conclusion that the 825 residential units, and 4.25 million sq. ft of commercial development proposed by the plan, would have "no significant impact" on the District's sewer system. It is not clear why the City and its engineers failed to recognize the obvious and recorded need for infrastructure changes. What is known is that the City did not consult the District when reaching this conclusion, defying both common sense, and statutory mandates.⁷⁹ The District made repeated attempts to cause an amendment to the City's General Plan to be executed which would integrate the District's considered and detailed Capital Improvement Plan, and ensure the City's EIR was based on complete and accurate data about the District

⁷⁵ See Addendum to 2015 Master Plan, included as Attachment 10.

⁷⁶ See Sierra West CCTV Report, dated October 31, 2022, included as Attachment 37.

⁷⁷ See *infra*, discussing the District's Capital Improvement Plan.

⁷⁸ See Addendum to 2015 Master Plan, included as Attachment 10; see also LAFCo MSR, included as Attachment 11, at p. 106.

⁷⁹ Pursuant to Government Code § 65852.2(A), City staff was required to meet with EPASD to discuss the City's intended density goals.

and its capacity.⁸⁰ The City did not wish to engage,⁸¹ instead setting in motion this costly, harmful, and unnecessary proposed reorganization.

District Capital Improvement Plan

The District has taken important steps to update its 2015 Capital Improvement Program (CIP), conducting recent hydraulic modeling and proposing improvements to address deficiencies and needs.⁸² Hydraulic modeling adheres to best practices that recommend preparation of a System Evaluation and Capacity Assurance Plan “...to assure that the collection system has adequate hydraulic capacity to convey dry and peak wet weather flows through the system to the ultimate disposal point without upset or discharge to the environment or private property.”

The District's well-supported Capital Improvement Plan includes the following changes to infrastructure attributable exclusively to new large scale development: (i) upsizing of the local pipeline, est. cost \$22 million, (ii) trunk capacity upgrades, est. cost \$13 million, and (iii) additional treatment plant capacity to be purchased from Palo Alto Regional Water Quality Control Plant, est. cost \$5 million.⁸³ When combined with other structural changes needed, the total cost is over \$64 million.⁸⁴ The District plans to implement these infrastructure changes over the course of 4 years, with 25% of the development occurring each year.⁸⁵

The Sanitary Sewer Replacement Project.

An example of the District's consistent effort to gradually and thoughtfully upgrade its infrastructure is the Sanitary Sewer Replacement Project (Beech St., Clarke Ave, and Green St.) for which the District is currently reviewing contracting bids, and which is set to commence in September 2023.⁸⁶

⁸⁰ See Email exchange with City Manager, including email dated December 13, 2021, in which City Manager declines to collaborate with the District on a realistic, and researched improvement plan, included as Attachment 48.

⁸¹ See *id.*

⁸² See *id.*

⁸³ See Government Financial Strategies Memorandum to EPASD re: Financing Sanitary System Infrastructure, dated December 14, 2022, included as Attachment 2, at p. 3 (integrating information from Sierra Consultants, Bartle Wells, and Hildebrand Financial Consultants).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Sanitary Sewer Replacement Project Contract Documents and Technical Specifications, included as Attachment 49.

EXHIBIT C-2 PAYING FOR IMPROVEMENTS

BACKGROUND

The City Resists Meaningful Collaboration

For the last several years, the City has resisted the District's attempts at meaningful collaboration relating to financing proposed development and has, instead, publicly suggested that the District is blocking all development in the City.⁸⁷ For instance, as late as September 2022, the District's Board President Behzabe Yanez reached out to the City with a request for a Special Study Session relating to financing the new infrastructure.⁸⁸ In the letter, Director Yanez stressed that the District wanted to "work together [with the City] to bring this progress about," and "create more unity in our community, and present viable options for proposed new development to move forward." While the City permitted the District to present in front of City Council, it listed as "Next Steps" in the Staff Report the plan to move forward with the LAFCo reorganization, suggesting that it was going to submit the City Proposal regardless of the information learned from the District's presentation.⁸⁹

The District Prioritizes Ethical, Thoughtful Development

Despite the City's unwillingness to meaningfully engage with the District, District staff and Board members, many of whom are also local ratepayers, and residents of the City of East Palo Alto, continued to devise a plan that would be amenable to progress and new development, while also adhering to the District's value of advocating for the local community, and ensuring that new construction was not built off the backs of ratepayers. Once the research related to system capacity described above⁹⁰ yielded substantial results regarding actual cost of expansion, the District was able to develop a more detailed financial plan. Among other things, the District's efforts included an All-Hands staff meeting which included the District's team from Bartle Wells Associates (the engineering firm that conducted the most recent rate study), Hildebrand Consulting (the firm that conducted the capacity charge study), and Sierra West Consultants (the firm that studied the District's hydraulic capacity via CCTV).⁹¹

⁸⁷ See *fn.* 9, showing that the City was aware that developers were not applying for permits, and that the District was not blocking development.

⁸⁸ See Yanez Letter to Mayor Abrica of EPA, included as [Attachment 33](#).

⁸⁹ See City Staff Report 7.2 re: Special Presentation from the East Palo Alto Sanitary District on Financing Options to Fund Infrastructure Improvements, included as [Attachment 44](#) (p. 65 of Agenda Packet).

⁹⁰ See *e.g.*, Hildebrand Capacity Charge Study, included as [Attachment 41](#).

⁹¹ See Government Financial Strategies Memorandum to EPASD re: Financing Sanitary System Infrastructure, dated December 14, 2022, included as [Attachment 2](#), at p. 1.

The District presented in front of the City's City Council on the financing options for the proposed development on September 20, 2022.⁹² The District's presentation included a detailed explanation of how the costs of expansion would be allocated to developers via capacity charges, and encouraged developers to engage with the District to "identify options of mutual benefit[']."⁹³

A few weeks later, on October 6, 2022, the District invited a group of developer representatives to review, and ask questions about, its findings, on October 6, 2022. The invitation was largely ignored, with very few developers attending the meeting.

FUNDING EXPANSION

The District plans to use reserves, general fund revenue, grants, and development fees to fund expansion.

Ratepayers Already Share in the Costs of New Infrastructure.

As explained above, the District's Plan attributes approximately \$40 million (out of a total of \$64.7 million+ in total expansion costs) exclusively to new development.⁹⁴ But, the developers would not even have to absorb the entire burden of capacity-related costs. In fact, the opposite is true: under the District's Current Improvement Plan, the District's funds would cover a portion of the improvements corresponding to the increase in market value to be received by existing ratepayers as a result of development.⁹⁵ In other words, ratepayers would not enjoy a disproportionate windfall as a result of the expansion. In contrast, the City's Proposal will inevitably result in ratepayers footing the bill for new development significantly in excess of what the community would stand to gain from the expansion.⁹⁶

Other Sources of Funding.

In addition to the District's sound budgeting approach which allows it to consistently fund maintenance and improvements while maintaining low rates, the District has exerted substantial effort in the pursuit of other sources of funding. For example, the District retained a consultant to facilitate the process of applying for various infrastructure grants on behalf of the District.

CONNECTION FEES

⁹² See *id.*

⁹³ *Id.*

⁹⁴ See e.g., Sierra West CCTV Report, p. 4, dated October 31, 2022, included as Attachment 37 (table summarizing structure and capacity related costs); see also Government Financial Strategies Memorandum to EPASD re: Financing Sanitary System Infrastructure, dated December 14, 2022, included as Attachment 2.

⁹⁵ *Ibid.*

⁹⁶ See District Letter commenting on the City's Supplemental LAFCo responses, included as Attachment 35.

The District's Connection Fees Are Reasonable and Well-Supported by Data

Although the current system is capable of adequately serving both existing ratepayers and modest new development, it would need to undergo substantial expansion, including costly upgrades to the sewer trunkline, in order to accommodate any large scale development. The District welcomes development, and has included a calculation of the cost of such expansion in its 2035 Capital Improvement Plan. Based on the Plan figures, a consultant hired by the District calculated the new connection fee to be \$14,464/ EDU.⁹⁷ This fee is fair, and within range for adjacent districts.⁹⁸⁹⁹ As a result, many serious investors have already applied for, and received Will Serve letters, and launched projects on the basis of the District's Connection Fees.¹⁰⁰ Some of the developers, e.g., Eden Housing who supported the preparation of an updated Municipal Service Review in 2020, have now entered into development agreements with the District.¹⁰¹ The District plans to implement expansion related improvements in phases, based on developer demand.¹⁰²

The District's Connection Fee Is Consistent With Gov. Code § 66000 et seq.

The District operates based on a considered improvement plan that accurately captures current ratepayer needs, and includes allocation of funds to accommodate future growth. But, where a development project substantially exceeds the District's current capacity, the District assesses fees consistent with the requirements and legislative intent of Gov. Code Section 66000, which is to impose the reasonable cost of developing new sewer connections on those enjoying the returns of that new capacity. (See Gov. Code § 66000 (the purpose of the fees is to "defray[] all or a portion of the cost of public facilities related to the development project). An agency is entitled to assess charges both for "public facilities *already in existence*", and for the construction of "*new facilities ... that are of "proportional benefit" to the developer.* (See Gov. Code § 66013(b) (emphasis added); see also *id.*, at (b)(5) (the fees are to bear a "reasonable relationship" to the benefits received by the developer).)

⁹⁷ See Hildebrand, *Capacity Charge Study*, September 7, 2022, included as [Attachment 41](#), pp. 1, 2, 4-6.

⁹⁸ See City Staff Report 7.2 re: Special Presentation from the East Palo Alto Sanitary District on Financing Options to Fund Infrastructure Improvements, included as [Attachment 44](#), p. 65.)

⁹⁹ The rate of return on development in this area is already favorable to investors (300% higher than the average in California, and even higher when compared to national averages). (See US Census Bureau Statistics compilation, included as [Attachment 9](#)). In other words, investing in the District is an enormous and unique financial opportunity. If investors are able to enjoy quick, reliable, and substantial returns—precisely because of economic, racial, and other inequities that persist in the region—the least the District could expect is that those reaping the benefits would foot the bill for costs directly related to their investment.

¹⁰⁰ See Exhibit C-3, Planned Development.

¹⁰¹ See *id.*

¹⁰² See Exhibit C-1, Planned Improvements.

Accordingly, the District's operating plan mandates that large scale new development require *new* collection capacity for increased sewer flows. As detailed below, the capacity charge assessed by the District was based on costs attributable only to new projects. It would contradict the intent of Gov. Code Section 6600 et seq., and the District's policies to instead impose these costs on existing ratepayers.

Connection Fee Calculation Method

The Connection Fee is based on a study conducted by an expert consultant. Among other things, it reflects the accelerated cost to serve new developments in the amount of approximately \$40 million. Because a connection must bear a reasonable relationship to the cost of development, the District's consultant carefully parsed out the monetary upside of the new development to the District as a whole, and then divided that figure by the number of units (including both existing and proposed as a result of new development). The resulting amount of \$14,464/EDU far from pushes the entire cost of expansion to the developer. On the contrary, it charges all stakeholders equally for the improvement, based on what each of them stand to gain. In contrast, if the District made the ratepayers fund the expansion—as the City's Proposal functionally sets out to do—the developer would stand to benefit from a disproportionate windfall.

The City's Proposed Budget is Unrealistic and Unduly Burdens Ratepayers

In contrast with the District's scientifically sound methodology for assessing the Connection Fee, the City's figures are derived from inaccurate and improperly framed data. First, the total cost of improvement due to development set by the City's Proposal is \$9.5 million, which is a gross understatement of the financial liabilities that would actually be incurred, in reality significantly in excess of \$40 million.¹⁰³

In addition, the operating and maintenance budget presented by the City is inaccurate because West Bay Sanitary District ("WBSD") data was used. The two collection systems are not the same. WBSD is a combined gravity/force main system. In contrast, the District's system is gravity only. Because gravity-sewers operate at a higher depth than force main systems, their maintenance often brings on the additional costs of more substantial excavation needed for repairs. Gravity-based systems, especially those based on older infrastructure, tend to also experience leaks and root growth at greater rates. Too, gravity sewers use more expensive pipes, further driving up the cost of maintenance. Second, The financial implications of these differences are significant: in 2022, the District's repair and maintenance expenses were more than 200% higher than that of WBSD.¹⁰⁴ Consequently, the City's use of WBSD data results in a significant underestimation of operating and maintenance costs in an effort to justify diverting reserve funds from needed structural improvements to increased capacity costs from new development.

¹⁰³ See City's Proposal, included as [Attachment 34](#).

¹⁰⁴ See District's 2023-24 budget, included as [Attachment 22](#); WBSD Annual Budget for 2022-23, available at this [link](#), and included as [Attachment 21](#), at p. 19.)

Further, The City's Proposal contemplates an accelerated depletion of the District's reserves. But, as explained above, the District believes this depletion would be unwarranted. Without the large scale development, *every single one of the improvement projects identified in the memorandum would be achievable using the District's current resources*, and without tapping the risk mitigation tool that is the District's reserve funds. In contrast, if large scale development is implemented, substantial changes are needed. Because these changes are attributable exclusively to the expansion, the District is justified in expecting the developers—who stand to gain from the profits—to pay their fair **share** of expansion.

EXHIBIT C-3 PLANNED DEVELOPMENT

The District is actively greenlighting new development based on accurately calculated, current Connection Fees. Thoughtful developers remain eager to invest in the region while responsibly contributing to the cost of expansion—expansion that would not have been necessary otherwise. Given the amount of interest in the area, the District plans to proceed with improvements that would enable large scale development, as an advance incentive to potential investors, who could then buy into this upgraded system by paying their fair share via connection fees. Conscientious investors acknowledge their role in expanding the system and are not deterred by the expenses associated with constructing new projects within the District.

The new development pipeline already includes numerous pending projects, including approximately 1,500 proposed residential units and 4.6 million square feet of non-residential commercial space. This upcoming development will necessitate municipal sewer services. As developers enter into development agreements, the District will continue expanding the system. The District is diligently reviewing these development proposals and has thoughtfully engaged with developers, indicating its readiness to issue "will serve" letters.

Retention of Liaison Consultant

In an effort to streamline communications regarding approvals for pending development, the District has retained a consultant to work with developers directly to identify individual preferences, needs, and concerns, and to assist in moving projects forward.

*Pending and Approved Development*¹⁰⁵

The District has been actively approving new projects. Some examples of recent pending and approved development:

1. Woodland Apartment Expansion/ Euclid Improvements Projects. The District is in the process of preparing an agreement for 444 net new dwelling units and roughly 5,000 square feet of retail and community space at and around 2001 Manhattan Ave., East Palo Alto, which is being developed by Sand Hill Property Company ("Sand Hill"). As of August 21, 2023, the developer was "eager to work with [the District] to move the project forward." Like the others, Sand Hill is ready and willing to pay the Connection Fee.

2. 965 Weeks. As recently as July 26, 2023, the District issued a "Will Serve letter to another developer who is planning new residential construction in the area that would include 136 affordable housing units. The parties also executed a Wastewater

¹⁰⁵ See Pending and Approved Development, included as [Attachment 50](#).

Expansion and Service Agreement. The developer of this project is ready and willing to pay the Connection Fee.

3. Light Tree. During its meeting on July 12, 2023, the District successfully approved a development agreement for over a 100 housing units. The developer of this project is ready and willing to pay the Connection Fee.

4. Clarum University Corner. The District is working with Clarum on establishing sewer connections for this 32-unit project. This developer is also ready and willing to pay the Connection Fee.

5. 2519 Pulgas Avenue – Ravenswood Family Health Center. The District is working with Sobrato to finalize sewer connection approvals for the 24.5 unit development project. This developer is also ready and willing to pay the Connection Fee.

6. 717 Donohoe St. The District is working with 8M Property-4, LLC on establishing sewer connections for a 14 unit project. This developer is also ready and willing to pay the Connection Fee.

7. 1062 Runnymede St. The District is working with RTC & J Me, LLC on implementing this 8-unit development project, and has issued a letter describing steps to receive a Will Serve letter. This developer is ready and willing to pay the Connection Fee.

8. 2340 Cooley Ave. The District is working with another developer on an 8-unit project. This developer is ready and willing to pay the Connection Fee.

9. 842 Green Street – Subdivision. The District is working with a developer on implementing this 3-unit development project, and has issued a letter describing steps to receive a Will Serve letter. This developer is ready and willing to pay the Connection Fee.

10. 1788 E Bayshore Road. This is a small 1 unit project which is currently being processed by the District. This developer is also ready and willing to pay the Connection Fee.

11. University Circle II. The District is in the final stages of approving another project for over 231,883 square feet of office space. The developer of this project is ready and willing to pay the Connection Fee.

12. Four Corners. The District is also working with Sand Hill on developing the Four Corners project, and has issued a letter describing steps to receive a Will Serve letter. This developer is also ready and willing to pay the Connection Fee. This developer is also ready and willing to pay the Connection Fee.

13. 1804 Bay Road. The District is working with a developer on establishing sewer connections for this project. This developer is also ready and willing to pay the Connection Fee.

14. Garden Place LLC. The District is working with a developer on establishing sewer connections for this project, and has issued a letter describing steps to receive a Will Serve letter. This developer is also ready and willing to pay the Connection Fee

15. 760 Weeks Townhomes. The District has approved this development project, and is working on issuing a Will Serve letter. This developer is also ready and willing to pay the Connection Fee.

16. 990 Garden St. The District is working with a developer on establishing sewer connections for this project, and has issued a letter describing steps to receive a Will Serve letter. This developer is also ready and willing to pay the Connection Fee.

17. 630 Donohoe St/ Pet Clinic / Animal Clinic. The District is working with developer Garden Place LLC to process the Will Serve Letter, with instructions having been sent to the developer on August 19, 2023. This developer is also ready and willing to pay the Connection Fee.

18. 547 Runnymede St. The District is working with this developer on establishing sewer connections for the project, and has issued a letter describing steps to receive a Will Serve letter. This developer is also ready and willing to pay the Connection Fee.

19. Harvest: The Landing. The District is working with Harvest Properties on establishing sewer connections for this project. This developer is also ready and willing to pay the Connection Fee.

20. 2535 Pulgas Avenue – Job Train. The District is working with Sycamore on implementing this development project. This developer is ready and willing to pay the Connection Fee.

21. 2020 Bay Road. The District is working with this developer on implementing this development project, and has issued a letter describing steps to receive a Will Serve letter. This developer is ready and willing to pay the Connection Fee.

22. EPA Waterfront Project. The District is working with Sycamore on implementing this development project. This developer is ready and willing to pay the Connection Fee.

23. 812 Green Street. The District is working with a developer on implementing this project. This developer is ready and willing to pay the Connection Fee.

24. 120-126 Maple Lane. The District is working with a developer on implementing this project. This developer is ready and willing to pay the Connection Fee.

25. 807 E Bayshore. The District is working with a developer on establishing sewer connections for this project. This developer is also ready and willing to pay the Connection Fee.

Additionally, several dozen residential projects have also been approved, and/or received further instructions from the District.