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Direct No.: 415.655.8143
isominskaia@bwslaw.com

Thank December 15, 2023

VIA E-MAIL AND U.S. MAIL

Robert Bartoli
Executive Commissioner
SMLAFCo
455 County Center
Redwood City, CA 94063
rbartoli@smcgov.org

Re: EPASD Reconsideration Request re: SMLAFCo Resolution No. 1312

Dear Rob:

On November 15, 2023, San Mateo Local Agency Formation Commission ("SMLAFCo") duly adopted Resolution No. 1312¹, approving File No. 22-09, the City of East Palo Alto's ("City") proposal to establish the East Palo Alto Sanitary District ("District") as a subsidiary district of the City ("City's Proposal").

Since SMLAFCo Resolution No. 1312 was adopted, the District has undertaken the following additional efforts:

1. On December 14, 2023, the District Board of Directors adopted a Capital Improvement Plan ("CIP") prepared by Sierra West, which defined the District's capital improvement objectives based on previous master plan studies and infrastructure repair requirements based on a recently completed closed-circuit television. The CIP is based on a thorough evaluation of expansion-related improvements needed to accommodate new development, and repair needs responsive to natural deterioration of the local pipeline. The CIP includes a priority list of repairs in the near and long term planning horizons, and a calculation of service rates needed to meet relevant cash flow projections.

¹ A revised Resolution containing additional terms and conditions proposed by members of the Commission was fully executed and transmitted to the District via email on November 22, 2023.

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2. On December 14, 2023, the District Board of Directors authorized the District General Manager to undertake a process to lower capacity fees from \$14,464 per equivalent dwelling unit to an amount between \$9,000 and \$10,000 per equivalent dwelling unit as determined by consultant based on adopted Capital Improvement Plan and authorized District General Manager to propose a process for refunding developers that previously paid higher fees;

3. On December 14, 2023, District Board of Directors authorized District General Manager to undertake Article 13 Section 6 (Proposition 218) process to increase sewer rates commencing July 1, 2024 from \$600 per single family residence to the rate recommended by the District's consultant; and

4. On December 14, 2023, District Board of Directors authorized the District's special counsel to draft an Ordinance setting forth a process for negotiating and approving will serve letters and development agreements including consequences if the requirements of the ordinance are not met.

The recent changes crystallize the District's position as the "agency that can best provide" sewer service to local ratepayers under Gov. Code section 56001. In light of these new and/or different facts, and pursuant to Gov. Code section 56895, the East Palo Alto Sanitary District ("District" or "EPASD") formally requests reconsideration of Resolution No. 1312, and asks that SMLAFCo proceed as follows:

1. Deny the City's Proposal.
2. Approve the District's Alternative Proposal², filed with SMLAFCo on September 19, 2023, which proposed to (i) retain EPASD current governance structure,

² Staff Report issued by SMLAFCo in connection with the November 15, 2023 hearing, stated that the Alternative Proposal did not "properly track the requirements of a 'proposal'." But the Government Code does not support this conclusion: the Code refers *only* to Section 56861 when defining an alternative proposal. (Gov. Code § 56862(d).) Section 56861, in turn, refers to "an alternative proposal to the subsidiary district proposal," describing the procedural requirements of filing a Resolution of Intent, and **providing no other limitations**. The description of "proposal" contained in the Staff Report is from definitions found in Section 56069, and makes no reference to what an alternative to said "proposal" would actually constitute (and whether it would be limited to an enumerated list of subtypes of changes in organization). The District fully complied with Section 56861 by issuing a Resolution of Intent to File an Alternative Proposal and

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(ii) amend the District's Sphere of Influence to be coterminous with its service boundaries, and (iii) remove EPASD's territory from the Sphere of Influence of the West Bay Sanitary District.

Thank you for your continued attention to this matter. Please do not hesitate to reach out should you have additional questions.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP



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immediately filing same with the Executive Commissioner. Thus, the District's Alternative Proposal complied with Code requirements, and was not a mere "application."