

SCVWD AGMT. NO. A2297

AGREEMENT BETWEEN

**CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION
AND
SANTA CLARA VALLEY WATER DISTRICT
FOR
LONG TERM OPERATION AND MAINTENANCE
OF THE INTERTIE**

November 24, 1999

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PUBLIC UTILITIES COMMISSION
AND
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FOR
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THIS AGREEMENT, made in the State of California on this 21st day of DEC., 1999, by and between the City and County of San Francisco ("City"), a municipal corporation, acting by and through its Public Utilities Commission ("Commission"), and the Santa Clara Valley Water District ("District"), a local public agency of the State of California governed by its Board of Directors.

RECITALS:

- A. WHEREAS, City owns and operates a water supply system which includes facilities to provide potable water to wholesale and retail customers in San Francisco, San Mateo, Santa Clara and Alameda Counties; and
- B. WHEREAS, District owns and operates a water supply system which includes facilities to provide potable water to wholesale customers in Santa Clara County; and
- C. WHEREAS, the Parties deem it to be in the public interest and to their mutual benefit to provide an interconnection of their respective water supply systems ("Intertie"), subject to a sharing of costs and pursuant to all terms and conditions of this Agreement; and
- D. WHEREAS, the Intertie will allow potable water to be supplied in either direction during an emergency or planned critical work on facilities which would otherwise be difficult to remove from service without the availability of an alternate water source; and
- E. WHEREAS, the Parties have exchanged sufficient information about their respective water supply systems, including current and future operations and long term improvements, to give reasonable assurance of the ability to deliver potable water in the event of an emergency or planned critical work; and

F. WHEREAS, individual water deliveries through the Intertie will be the subject to concurrence or agreement by the Parties; and

G. WHEREAS, this Agreement between the District and City is for the long term operation and maintenance of the Intertie;

NOW, THEREFORE, in consideration of the promises hereinafter contained, the District and City agree as follows:

1. DEFINITIONS

“Annual Meeting”: A yearly meeting of the Parties that occurs within ninety (90) days of the end of the Fiscal Year to discuss operation, maintenance, repair or improvement of the Intertie, the annual reconciliation for water deliveries, or any other pertinent matter.

“Critical Work”: Work scheduled to be performed by a Party on its Separate Facilities which, because of the length of time needed to complete such work, would otherwise be difficult to perform without the availability of an alternative potable water source.

“Emergency”: (1) Actual or imminent failure of facilities, such as major pipelines, treatment plants, or pumping stations; (2) Major disruptions in water supply caused by natural conditions, manmade disasters or temporary regulatory conditions; or (3) A water shortage emergency declared under California Water Code § 350 *et seq.*

“Fiscal Year”: The period from July 1 of any year through June 30 of the following year.

“Intertie” or “Shared Project Facilities”: Approximately 800 feet of 42-inch diameter connecting pipe between the City’s Bay Division Pipelines (“BDPL”) Nos. 3 and 4 and the terminus of the District’s Milpitas Pipeline, connection to the terminus of the district’s Milpitas Pipeline, a 40 million-gallon-per-day (“mgd”) capacity pump station, a flowmeter, connections to Bay Division Pipelines Nos. 3 and 4, isolation valves at Bay Division Pipelines connections, installation of isolation valve at the terminus of the District’s Milpitas Pipeline, and other miscellaneous appurtenances necessary to deliver and monitor the quantity and quality of treated, potable water delivered in either direction.

“Maintain” or “Maintenance”: Work necessary to allow the Intertie to be utilized for its intended purposes, including but not limited to pump lubrication and testing, meter calibration, pipeline upkeep and repair.

“Operate” or “Operation”: Use of the Intertie to move water supply in either direction in an amount and at a rate agreed to by the Parties.

“Separate City Facilities”: Separate City Facilities include those water treatment facilities which solely benefit the City and are associated with delivery of District’s chloraminated water into City’s chlorinated water system, and all other City owned facilities which solely benefit the City. The City intends to convert to chloramination of its water supply.

“Separate District Facilities”: Separate District Facilities include those water treatment facilities which

solely benefit the District and are associated with delivery of City's chlorinated water into District's chloraminated water system, and all other District owned facilities which solely benefit the District. "Separate Facilities": Refers to both Separate City Facilities and Separate District Facilities.

2. OWNERSHIP OF THE INTERTIE

All physical works of the Intertie shall be jointly owned. Right of way for the Intertie shall be secured in the name of the City with express rights for access to Intertie facilities provided to both the City and the District, except that right of way obtained from the City of Milpitas shall be secured jointly in the names of the City and the District.

3. OPERATION OF THE INTERTIE

A. The Intertie shall only be operated during an Emergency or Critical Work, or to reimburse water received during an Emergency or Critical Work ("reimbursement water") as specified under this Agreement. The Intertie shall only be operated with the concurrence of the Parties. Either Party may operate the physical works of the Intertie and the isolation valves between the Intertie and the other Party's Separate facilities for the delivery of water with the concurrence of the other Party. Each Party is solely responsible for the operation of their Separate Facilities for water treatment, including providing and/or maintaining the appropriate supply of chemicals. The Parties shall endeavor to provide as much advance notice as possible of a request to operate the Intertie. To the extent possible, City and District shall coordinate operations of their separate water supply systems with the operation of the Intertie. Water supplied through the Intertie shall be measured by an accurate flow meter (+2%).

B. The Parties will use their best efforts to respond to a request for water delivery under this Agreement. The Parties do not guarantee or warrant that they will be able to respond in full or in part to a request for water delivery. No liability to each other or to any third party is assumed or is to be derived from this Agreement in consequence of failure to supply potable water.

C. Each Party shall provide the name, telephone number, and beeper number of a person who can be reached 24 hours per day and 365 days per year as an emergency contact person. That person shall have authority to grant requests and set conditions for the operation of the Intertie for Emergencies. The requesting Party shall forward a written request for Emergency supply as soon as possible and will be provided a written response.

D. Requests to operate the Intertie for Critical Work shall be directed in writing to General Manager, Santa Clara Valley Water District or General Manager, Public Utilities Commission or their designee. The Parties shall schedule operation of the Intertie for "reimbursement water" during the Annual Meeting provided herein.

The Intertie shall not be operated for Critical Work until the Parties agree on the amount and rate of water to be delivered, relevant operating criteria, and delivery schedules. Upon receipt of a written request for water delivery during Critical Work, the noticed Party shall expeditiously review the proposed schedule and, after consultation with the other Party, may make such modifications as are necessary to ensure that the amounts, times and rates of release will be consistent with the noticed Party's overall delivery ability and planned operations. The noticed Party may subsequently revise the delivery schedule if necessary to not unreasonably impact its own water deliveries, facilities or operations; a Party shall immediately notify the other Party of any such delivery schedule revisions.

E. The Parties assume no liability beyond the Intertie. The respective Parties will be responsible for any adverse impacts to their own customers that may result from the potable water received through the Intertie.

4. MAINTENANCE, REPLACEMENT AND REPAIR OF THE INTERTIE

The City shall have primary responsibility for routine maintenance, replacement and repair of the physical works of the Shared Project Facilities. If mutually agreed, accomplishment of replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration to be by the City or the District as may be agreed. Routine maintenance, replacement and repair of each Party's Separate Facilities such as water treatment facilities, shall be the sole responsibility of each respective Party. The Parties shall establish and agree upon an annual plan and budget for maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The City may repair or replace any of the physical works of the Shared Project Facilities, as consistent with the annual plan and budget or as mutually agreed by the Parties.

Any fences and access gates to the Intertie shall be kept in good repair by the City. Such gates shall be kept closed and locked except when in actual use. The Parties shall provide each other with a key to each lockable gate to the Intertie.

5. MAINTENANCE OF OPERATING PERMITS

The City shall have primary responsibility for maintaining and obtaining all permits and preparing annual reports or plans as necessary to comply with current or future applicable local, state, or federal regulations for operation of the Intertie facilities, including those necessary for Separate Facilities. Such permits may include, but are not limited to Hazardous Material Business or Management Plans, Annual Certification, Hazardous Material Storage Permits, Hazardous Materials Waste Generation Permit, or Spill Prevention Control and Countermeasures Plan. District shall provide timely response for requested information relative to its Separate Facilities.

6. **WATER QUALITY**

Either Party may test water quality at any time during operation of the Intertie to ensure that deliveries meet State and Federal requirements. Testing required to make adjustments of aesthetic qualities will be the responsibility of the receiving party.

7. **REASONABLE CARE**

Each party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that the other party's facilities and operations are not impaired or damaged.

8. **HAZARDOUS MATERIAL**

The Parties shall not cause any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Intertie, or transported to or from the Intertie except as may be necessary or convenient for the operation and maintenance of the facilities included in this agreement. Either Party shall immediately notify the other Party upon learning of, or having reason to believe that, a release of Hazardous Material has occurred in, on or about the Intertie. Each Party shall further comply with all laws requiring notice of such releases or threatened releases to local, state, or federal governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that either Party or its Agents or Invitees cause a release of Hazardous Material, that Party shall, without cost to other Party and in accordance with all laws and regulations, return the Intertie to the condition immediately prior to the release. In connection therewith, the Party causing the release of Hazardous Material shall afford the other Party a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Intertie.

9. PROTECTION OF THE PARTIES' SEPARATE FACILITIES

If any occurrence or conditions during operation or maintenance of the Intertie threaten the physical integrity or operational capability of either Parties' Separate Facilities, the affected Party may stop operation or maintenance of the Intertie and/or take any action that the affected Party determines to be necessary to protect its own Separate Facilities. Either Party may remove part of the Intertie, if required, for emergency repair of its Separate Facilities. Notice shall be given to the other Party as soon as practical.

10. IMPAIRMENT OR DAMAGE TO SEPARATE FACILITIES

A Party shall remedy any actual or threatened impairment or damage to the other Party's Separate Facilities or right of way caused by exercise of any of rights under this Agreement. This duty to repair shall include any and all impairment or damage to Separate Facilities and right of way which would not have occurred had the Intertie not been constructed. If either Party refuses to undertake any repair or removal necessary to remedy any actual or threatened damage or impairment to facilities or right of way, or if a Party so elects, the other Party may upon reasonable notice arrange for the necessary repair or removal. The noticed Party shall reimburse the other Party for the full cost of such necessary repair or removal. If after being notified of the need for the repairs under this section the noticed Party does not undertake the necessary repairs itself, the other Party may require an advance deposit sufficient to pay the estimated cost of the repair or removal prior to its performance, and the noticed Party agrees to furnish said deposit within 60 days of such request.

11. MAINTENANCE AND REPAIRS OF SEPARATE FACILITIES

Either Party may at any time perform or cause the performance of work of any nature by contractors or other forces on its own Separate Facilities or water supply system. The other Party shall cooperate with such contractors or forces, conduct its operations in such manner as not to cause any unnecessary delay or hindrance to their work, and adjust and coordinate its work with theirs so as to permit proper completion of all work in the area. Notification to the other Party shall be provided with as much advance notice as practical.

When a Party, its contractors or employees are performing work related or adjacent to work being performed by the other Party, its contractors or employees, both Parties shall make reasonable efforts to cooperate with each other's contractor or employees, to conduct its operations in such a manner as not to cause any unnecessary delay or hindrance to their work, and to adjust and coordinate its work with theirs so as to permit proper completion of all work in the area. Functioning of the Intertie shall be a priority.

12. NOTICES

Unless otherwise specified in this Agreement, all notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed and stamped envelope and deposited with the US Postal Service for delivery by registered or certified mail. Unless and until notified otherwise, in writing, all notices except as otherwise specified in this Agreement shall be delivered to the parties at their addresses as shown below:

Manager, Water Supply Division
San Francisco Public Utilities Commission
1000El Camino Real
Millbrae, CA 94030

Manager, Operations and Maintenance Group
Santa Clara Valley Water district
5750 Almaden Expressway
San Jose, CA 95118

Discretionary notice shall be given by fax to a phone number provided by the Party receiving notice.

13. JOINT COSTS OF THE INTERTIE

The Parties shall share equally in costs reasonably incurred that are properly attributable to the work authorized under this Agreement, excluding those items otherwise specifically identified or determined to be separate costs. Such costs shall include, but not be limited to:

- (a) Costs to administer this Agreement, including maintenance of records, preparation of delivery schedules, annual meetings, maintenance of operating permits, and preparation of quarterly billing.
- (b) Costs of normal inspections, repairs, calibrations, valve exercising and other routine maintenance activities for the Intertie.
- (c) All other mutually agreed costs for major additions, replacements, or extraordinary repairs of valves, piping and equipment associated with the physical works of the Intertie.

Agreement shall be reached by written agreement or resolution at the Annual Meeting. Each Party shall be responsible for establishing a reporting system that allows for identification and tracking of joint costs versus separate project costs as provided for in this Agreement.

14. SEPARATE COSTS OF THE INTERTIE

All costs associated with the operation of the Intertie to transfer water between the Parties shall be borne by the Party receiving water. Such costs include, but are not limited to, labor and materials required for operation of each Party's water treatment facilities, additional local site operation staff or staff visits by the receiving Party, or additional maintenance staff or staff visits by the receiving Party

which are in excess of the mutually agreed routine maintenance schedule.

15. PAYMENTS FOR OPERATIONS AND MAINTENANCE OF INTERTIE

The City shall have lead responsibility for reconciliation of Joint Costs associated with the Intertie facility. District shall provide City a quarterly accounting of District's Joint Cost expenditures for inclusion by the City in its accounting for billing and invoicing of Joint Costs for the Intertie.

- (a) The City shall bill the District quarterly and include the supporting accounting system documentation as appropriate.
- (b) The City's invoices to the District shall include sufficiently detailed information to explain the types of Joint Costs incurred during the billing period. The City shall provide clarifications of invoices to District upon written request.
- (c) All payments shall be due within 60 days after the date of the City's billing or if District has requested a clarification of an invoice in writing within 30 days of the City's billing, within 30 days of the City's written clarification.
- (d) Interest shall be charged for all delinquent payments. District shall pay the City accrued interest on all overdue payments at the rate of 0.5 percent per month from the due date to the date of payment.

The frequency of reporting and billings may be modified upon mutual agreement and written confirmation, provided however that the reporting/billing cycle shall be no less than one year.

16. WATER SUPPLIED THROUGH INTERTIE; DESIGNATION OF POWER SUPPLY AS MUNICIPAL LOAD

The Parties intend that water supplied through the Intertie shall be reimbursed with water received through the Intertie. Neither the City nor the District shall through operation of the Intertie become wholesale or retail customers of the each other. Supply of water under this Agreement by either Party is not to be construed as a dedication of a permanent supply to the other Party or any retail water provider; such supply is temporary and interruptible only.

The Intertie will allow the City to receive potable water during an Emergency or as necessary to perform Critical Work. The Intertie will thereby serve municipal public purposes for the City. Consequently, power to the Intertie shall be designated as municipal load subject to agreements between Pacific Gas and Electric Company and the City.

17. ANNUAL RECONCILIATION OF WATER SUPPLIED THROUGH THE INTERTIE

The Parties shall maintain accurate records of quantities of water supplied and received through the Intertie. The Parties shall reconcile deliveries and receipts of water during any given year against any existing carryover balance from the previous year during the Annual Meeting provided for in this Agreement. A Party who holds a credit after the annual reconciliation may (1) carry the credit forward subject to the annual reconciliation; or (2) request "reimbursement water" under a schedule and in a manner agreed to by the Parties. Notwithstanding the foregoing, a Party may not carry a credit beyond ten consecutive years without the agreement of the other Party. If the Party owing "reimbursement water" does not agree to carry forward a credit beyond ten years, then that Party shall pay for the credit water at the other Party's current wholesale rate for potable water. The District's wholesale rate shall be the sum of the "Zone 5 Basic Wateruser Charge" and the "Treated Water Surcharge" rates in effect at the time of exchange. The City's wholesale rate shall be the "Schedule W25 - Resale Use With Long Term Contract" rate in effect at the time of exchange, except that the monthly service charge shall not apply.

18. ANNUAL MEETINGS

The Parties will meet annually within ninety (90) days of the end of the Fiscal Year to discuss operation, maintenance, repair or improvement of the Intertie, the annual reconciliation for water deliveries, or any other pertinent matter. Other meetings shall be conducted as necessary to resolve budgeting or other issues. The annual meeting site will alternate between San Francisco and the District in the absence of a mutually agreed third site.

19. REMOVAL OF INTERTIE AND SITE RESTORATION

In the event of termination of this Agreement, removal of the Intertie, disposal of jointly-owned equipment, site restoration, and reconciliation for real property cost contributions by the District shall be the subject of a separate agreement between the Parties. In the absence of such agreement, City shall be responsible for specifying and obtaining bids subject to approval by the District. Parties shall share equally the costs and salvage value.

20. RIGHTS OF ACCESS

The City grants to the District, its agents, and employees permission to enter upon the City's right of way in the vicinity of the Intertie for observation, operation, maintenance, replacement, repair, and removal of Intertie physical works. The right of access is limited to that portion of the City's right of way as is reasonably necessary to accomplish the actions authorized under this Agreement. District's access shall not interfere with City in its right of way.

The District grants to the City, its agents, and employees permission to enter upon the District's right of way in the vicinity of the Intertie for observation, operation, maintenance, replacement, repair, and removal of Intertie physical works. The right of access is limited to that portion of the District's right of way as is reasonably necessary to accomplish the actions authorized under this Agreement. City's access shall not interfere with District in its right of way.

21. LIABILITY, INDEMNITY AND HOLD HARMLESS

In performance of this Agreement, each Party, its agents, employees, and contractors shall act in an independent capacity and not as officers, employees, or agents of the other Party. Neither Party assumes any liability for the activities of the other Party in performance of this Agreement. Each Party is responsible in proportion to fault for all liability, including but not limited to personal injury or property damage that may arise out of the Intertie physical works or rights exercised pursuant to this Agreement or which may arise out of its own actions under this Agreement, excepting only such injury, damage, or loss caused solely by the negligence or willful misconduct of the other Party, or its officers or employees. In the event any claim of liability for which a Party is responsible under this provision is instituted against the other Party, or any officer or employee thereof, the responsible Party shall defend, indemnify, and hold each of them harmless from such claim.

22. INSURANCE

During the term of this Agreement, each Party shall either purchase insurance through an insurance carrier or maintain a program of self-insurance to insure its obligations that may arise from activities under this Agreement.

23. MAINTENANCE AND INSPECTION OF BOOKS, RECORDS, AND REPORTS

The Parties shall maintain careful, accurate and complete records of all Intertie operation and maintenance costs. During regular office hours, each party and their duly authorized representatives shall have the right to inspect and make copies of any books, records, and reports of the other party pertaining to this Agreement or related matters. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. The parties may audit any and all records and activities at any time up to five years.

24. LEGAL REQUIREMENTS

In exercising its rights under this Agreement, each Party shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. Upon written request, a Party shall provide written proof that such consent, permit, or order was properly obtained.

25. SUNSHINE ORDINANCE

In accordance with San Francisco Administrative Code section 67.24(e), contracts and all other records of communications between City and persons seeking contracts, shall be available for public inspection upon request.

26. ASSIGNMENT; SUCCESSORS AND ASSIGNS OBLIGATED

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein shall be valid unless and until the assignment or transfer is approved in writing by the other party. This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

27. UNCONTROLLABLE FORCES

If either of the parties to this Agreement is precluded in whole or in part from performing operation and maintenance activities as a result of uncontrollable forces, both parties are relieved from the obligations to the extent they are reasonably unable to complete the obligations due to the uncontrollable force. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, floods and other natural disasters. However, each party shall be responsible for repaying any costs incurred on its behalf by the other party before the occurrence of the uncontrollable force.

28. DISPUTES

Any unresolved disputes occurring under this Agreement shall be reviewed and settled by the General Manager of Santa Clara Valley Water District and the General Manager of San Francisco Public Utilities Commission. All payments must be made and responsibilities undertaken pending resolution of disputes by the Parties.

29. MODIFICATION; SEVERABILITY

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Should any provision(s) of this Agreement be stricken by judicial decree the Agreement shall remain in force and effect, as to all other provisions.

30. AGREEMENT NOT A PRECEDENT

This Agreement shall not be regarded as a precedent for future operation and maintenance agreements, nor shall it be construed as joining San Francisco to the State Water Project or the Central Valley Project as a long-term water service contractor or otherwise. District will remain the principal wholesale supplier of water in the County of Santa Clara.

31. TERMINATION OF THE AGREEMENT

This Agreement shall terminate upon mutual agreement or a finding by the governing body of either Party that the public interest requires termination, following which the Agreement may be terminated by one year's written notice of termination to the other Party.

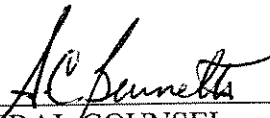
32. CERTIFICATION AND APPROVAL BY SAN FRANCISCO

This Agreement will not take effect until the Board of Supervisors for the City and County of San Francisco approves by resolution pursuant to Charter Section 9.118.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date first above written.

Approved as to form:

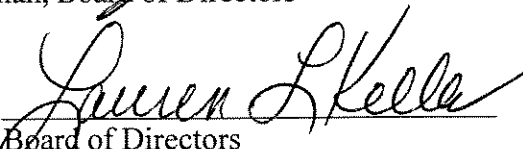
SANTA CLARA VALLEY WATER DISTRICT



GENERAL COUNSEL
Santa Clara Valley Water District

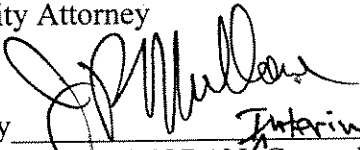
By 

Chairman, Board of Directors

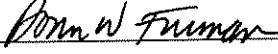
Attest: 

Clerk, Board of Directors

PUBLIC UTILITIES COMMISSION
Approved as to form:
LOUISE H. RENNE
City Attorney

By 

ANSON B. MORAN, ^{Interim} General Manager
San Francisco Public Utilities Commission



Deputy City Attorney
Authorized by Public Utilities Commission

Resolution No. 60-0033 1/25/2000

ADOPTED: _____ Jan 25, 2000

ATTEST: _____ Jim R. Thompson
Secretary, Public Utilities Commission

Approved by the Board of Supervisors for City and County of San Francisco

Resolution No. _____ 641-00

ADOPTED: _____ 7/24/2000

ATTEST: _____ Glenn L. Zang
Clerk of the Board of Supervisors