

File No. 240190

Committee Item No. 1

Board Item No. 15

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 3, 2024

Board of Supervisors Meeting Date April 16, 2024

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Executed Agreement 11/24/1999</u>         |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Amendment No. 1 3/2/2009</u>              |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Resolution No. 08-0223 12/9/2008</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Resolution No. 00-0033 1/25/2020</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PUC Resolution No. 24-0047 1/27/2024</u>  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Board Resolution No. 641-00 7/26/2000</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Board Resolution No. 60-09 3/2/2009</u>   |
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Completed by: Brent Jalipa Date March 28, 2024

Completed by: Brent Jalipa Date April 4, 2024

1 [Agreement Amendment - Santa Clara Valley Water District - Long-Term Operation and  
2 Maintenance of Intertie Facility]

3 **Resolution approving the Second Amendment to the Agreement between the San**  
4 **Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District**  
5 **(District) for long-term operation and maintenance of the Intertie Facility located in**  
6 **Milpitas pursuant to Charter, Section 9.118, to re-designate the District as the**  
7 **Operation and Maintenance (O&M) Party of the Intertie Facility from July 1, 2024,**  
8 **through June 30, 2029, with the SFPUC and the District meeting and conferring before**  
9 **the end of the five-year period to determine, by mutual written agreement, which of**  
10 **them shall be the O&M Party beyond June 30, 2029.**

11  
12 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) owns and  
13 operates the Regional Water System that spans from Tuolumne County to the City and  
14 County of San Francisco, and delivers potable water to wholesale and retail customers in the  
15 East and South Bay and the Peninsula, as well as retail customers in San Francisco; and

16 WHEREAS, The Santa Clara Valley Water District (District) owns and operates a  
17 wholesale water system in Santa Clara County that comes within a thousand feet of the  
18 SFPUC's system in the City of Milpitas; and

19 WHEREAS, On January 25, 2000, by Resolution No. 00-0033, the SFPUC approved  
20 two agreements between the SFPUC and the District to 1) develop an Intertie Facility that  
21 would serve as an interconnection of the two water supply systems and 2) provide for the  
22 long-term operation and maintenance of the Intertie Facility (O&M Agreement); and

23 WHEREAS, On July 24, 2000, by Resolution No. 641-00, the Board of Supervisors  
24 approved both agreements pursuant to Charter, Section 9.118; and

1           WHEREAS, The Intertie Facility, completed in 2000, consists of a pump station,  
2 interconnecting piping, and other ancillary systems capable of delivering up to 40 million  
3 gallons a day of potable water in both directions; and

4           WHEREAS, Since its completion, the SFPUC and the District have used the Intertie  
5 more than 30 times for emergencies or for planned work on critical facilities that would  
6 otherwise be difficult to remove from service without the availability of an alternate water  
7 supply; and

8           WHEREAS, The O&M Agreement, as originally approved, allowed either the SFPUC or  
9 the District to operate the Intertie, and it designated the SFPUC as the party having primary  
10 responsibility for routine maintenance, replacement, and repair of the Intertie; and

11           WHEREAS, On December 9, 2008, by Resolution No. 08-0223, the SFPUC approved  
12 the First Amendment to the O&M Agreement (First Amendment), subject to Board of  
13 Supervisors approval under Charter, Section 9.118; and

14           WHEREAS, On March 2, 2009, by Resolution No. 60-09, the Board of Supervisors  
15 approved the First Amendment and authorized the General Manager of the SFPUC to  
16 execute the Amendment pursuant to Charter, Section 9.118; and

17           WHEREAS, The First Amendment provided, in part, that the SFPUC and the District  
18 would jointly designate one of them as the "O&M Party" with primary responsibility for routine  
19 operation, maintenance, replacement, and repair of the Intertie, and it designated the District  
20 as the O&M Party from March 2, 2009, until at least December 31, 2013; and

21           WHEREAS, The SFPUC and the District designated the District as the O&M Party  
22 during this time period because the implementation of the SFPUC's Water System  
23 Improvement Program (WSIP) placed high burdens on the SFPUC's operations and  
24 maintenance staff while different parts of the Regional Water System were being taken out of  
25 service for rehabilitation or replacement; and

1           WHEREAS, Before December 31, 2013, the SFPUC and the District agreed to  
2 designate the SFPUC as the O&M Party starting on January 1, 2014, pursuant to the  
3 Agreement, as amended, and the SFPUC has remained the O&M Party since that date; and

4           WHEREAS, The SFPUC and the District recognize that the Intertie may be more  
5 efficiently operated and maintained by the District, given its proximity to the Intertie and the  
6 impact of the Intertie's operation on the District's system; and

7           WHEREAS, The proposed Second Amendment to the O&M Agreement will re-  
8 designate the District as the O&M Party from July 1, 2024, through June 30, 2029, with the  
9 SFPUC and the District meeting and conferring before the end of this five-year period to  
10 determine, by mutual written agreement, which of them shall be the O&M Party beyond  
11 June 30, 2029; and

12           WHEREAS, The Second Amendment will also 1) designate the O&M Party with  
13 primary responsibility for maintenance of operating permits and preparation of annual reports  
14 or plans under Section 5 of the Agreement; 2) provide that all costs associated with the  
15 operation of the Intertie to deliver "reimbursement water" shall be borne by the Party  
16 delivering that water under Section 14 of the Agreement; and 3) revise the terms for the  
17 annual reconciliation of water supplied through the Intertie under Section 17 of the  
18 Agreement; and

19           WHEREAS, On February 27, 2024, by Resolution No. 24-0047, the SFPUC approved  
20 the Second Amendment to the O&M Agreement, subject to Board of Supervisors approval  
21 under Charter, Section 9.118; and

22           WHEREAS, Funds for this Agreement will continue to be available from the Water  
23 Enterprise's operating budget as appropriated through the City and County of San Francisco's  
24 budget process and subject to approval during the City's budget cycle and certification by the  
25 Controller; now, therefore, be it

1           RESOLVED, That this Board of Supervisors hereby approves and authorizes the  
2 General Manager of the SFPUC to execute the Second Amendment to the Agreement  
3 between the San Francisco Public Utilities Commission and Santa Clara Valley Water District  
4 for Long-Term Operation and Maintenance of the Intertie located in Milpitas; and, be it

5           FURTHER RESOLVED, That within 30 days of the execution of the Second  
6 Amendment to the Agreement, the General Manager of the SFPUC shall provide the signed  
7 Agreement, as amended, to the Clerk of the Board for inclusion in the official file.

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**Second Amendment to 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**

THIS SECOND AMENDMENT (“Second Amendment”) is made in the State of California on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between the City and County of San Francisco, acting by and through its Public Utilities Commission (“City”), and the Santa Clara Valley Water District (“District”), which are herein referred to collectively as “Parties” and individually as “Party.”

**RECITALS**

WHEREAS, On December 21, 1999, the Parties entered into the Agreement for Development of an Intertie Facility, which enabled the Parties to develop an interconnection of their respective water supply systems (“Intertie”), as authorized by San Francisco Public Utilities Commission Resolution No. 00-0033, dated January 25, 2000; San Francisco Board of Supervisors Resolution No. 641-00, dated July 24, 2000; and Santa Clara Valley Water District Board of Directors approved motion, dated December 21, 1999; and

WHEREAS, On December 21, 1999, the Parties also entered into the Agreement for Long Term Operation and Maintenance of the Intertie (“Agreement”), as authorized by San Francisco Public Utilities Commission Resolution No. 00-0033, dated January 25, 2000; San Francisco Board of Supervisors Resolution No. 641-00, dated July 24, 2000; and Santa Clara Valley Water District Board of Directors approved motion, dated December 21, 1999; and

WHEREAS, Section 3 of the Agreement provided, in part, that “[e]ither Party may operate the physical works of the Intertie ... for the delivery of water with the concurrence of the other Party,” and Section 4 of the Agreement provided, in part, that “[t]he City shall have primary responsibility for routine maintenance, replacement and repair of the physical works of the Shared Project Facilities,” or Intertie, as defined in the Agreement; and

WHEREAS, On March 2, 2009, the Parties entered into the First Amendment to the Agreement (“First Amendment”), as authorized by San Francisco Public Utilities Commission Resolution No. 08-0223, dated December 9, 2008; and San Francisco Board of Supervisors Resolution No. 60-09, dated February 24, 2009; and

WHEREAS, The First Amendment amended Section 4 of the Agreement, in part, to provide that “[t]he Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement, and repair of the physical works of the Shared Project Facilities” – the newly defined “O&M Party” – and to designate the District as the O&M

Party until at least December 31, 2013, without modifying either Party's ability to operate the Intertie under Section 3 of the Agreement; and

WHEREAS, The First Amendment also amended Section 15 of the Agreement to provide that the O&M Party, rather than the City, shall have lead responsibility for reconciliation of joint costs associated with the Intertie; and

WHEREAS, Before December 31, 2013, the Parties agreed to jointly designate the City as the O&M Party starting on January 1, 2014, pursuant to Section 4 of the Agreement, as amended, and the City has, in accordance, remained the O&M Party since that date; and

WHEREAS, The Parties now agree that the Intertie may be more efficiently operated and maintained by the District, given its proximity to the Intertie and the impact of the Intertie's operation on the District's system, and the District should thus be the O&M Party; and

WHEREAS, The Parties desire to amend the Agreement again on the terms and conditions set forth herein in order to (1) designate the District as the O&M Party from July 1, 2024 through June 30, 2029, with the Parties meeting and conferring before the end of this five-year period to determine, by mutual written agreement, which of them shall be the O&M Party beyond June 30, 2029, under Section 4 of the Agreement; (2) designate the O&M Party with primary responsibility for maintenance of operating permits and preparation of annual reports or plans under Section 5 of the Agreement; (3) provide that all costs associated with the operation of the Intertie to deliver "reimbursement water" shall be borne by the Party delivering that water under Section 14 of the Agreement; and (4) revise the terms for the annual reconciliation of water supplied through the Intertie under Section 17 of the Agreement.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the Parties agree as follows:

## **Article 1      Definitions**

The following definitions shall apply to this Amendment:

1.1      **Agreement.** The term "Agreement" shall mean the Agreement for Long Term Operation and Maintenance of the Intertie dated December 21, 1999 between the City and the District, as amended by the First Amendment dated March 2, 2009.

1.2      **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

## **Article 2      Modifications of Scope to the Agreement**

The Agreement is hereby modified as follows:

2.1 **Maintenance, Replacement and Repair of the Intertie.** Section 4 of the Agreement, entitled “Maintenance, Replacement and Repair of the Intertie,” currently reads as follows:

The Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement and repair of the physical works of the Shared Project Facilities (“the O&M Party”). It is the Parties intent that the District shall be designated as the O&M Party until at least December 31, 2013. If mutually agreed, accomplishment of operation, maintenance, replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration by the City or the District as may be agreed. Routine operation, 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 operation, maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The District or 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. 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.

Such section is hereby amended in its entirety to read as follows:

One Party to this Agreement shall have primary responsibility for routine operation, maintenance, replacement and repair of the physical works of the Shared Project Facilities (“the O&M Party”). Following the Parties’ joint designation of the District as the O&M Party between March 2, 2009 and December 31, 2013, and the City as the O&M Party starting on January 1, 2014, the Parties agree that the District shall be designated the O&M Party starting on July 1, 2024, and shall remain the O&M Party through June 30, 2029.

If mutually agreed, accomplishment of operation, maintenance, replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration by the City or the District as may be agreed. Routine operation, 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 operation, maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The District or 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.

By March 1, 2029, the Parties shall meet and confer to decide which of them shall be designated the O&M Party as of July 1, 2029 and shall memorialize this designation in writing, signed by their General Manager and Chief Executive Officer, or the designees of their General Manager and Chief Executive Officer, by May 31, 2029. The Parties may change the O&M Party designation again at a future date, but no more frequently than once every five years, if mutually agreed and memorialized in writing as provided in the foregoing sentence.

Any fences and access gates to the Intertie shall be kept in good repair. 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.

**2.2 Maintenance of Operating Permits.** Section 5 of the Agreement, entitled “Maintenance of Operating Permits,” currently reads as follows:

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 it’s Separate Facilities.

Such section is hereby amended in its entirety to read as follows:

The O&M Party 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, Santa Clara County Department of Environmental Health permit, Hazardous Waste Generator Permit, Bay Area Air Quality Management District – Permit to Operate (generators), Milpitas Fire Department – Fire Code permit, Hazardous Materials Business Plan, Spill Prevention Control and Countermeasure Plan, and/or Operations Plan. The City shall provide timely response for requested information relative to its Separate Facilities.

**2.3 Separate Costs of the Intertie.** Section 14 of the Agreement, entitled “Separate Costs of the Intertie,” currently reads as follows:

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.

*Such section is hereby amended in its entirety to read as follows:*

All costs associated with the operation of the Intertie to transfer water between the Parties for the purposes of an Emergency or Critical Work shall be borne by the Party receiving the water for that Emergency or Critical Work. 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, or additional maintenance staff or staff visits which are in excess of the mutually agreed routine maintenance schedule. After such a transfer, all costs associated with the operation of the Intertie to enable the Party that had received water during the Emergency or Critical Work to then deliver "reimbursement water" to the other Party, pursuant to Section 17 of this Agreement, shall be borne by the Party delivering the "reimbursement 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, or additional maintenance staff or staff visits which are in excess of the mutually agreed routine maintenance schedule.

**2.4 Annual Reconciliation of Water Supplied Through the Intertie.** Section 17 of the Agreement, entitled "Annual Reconciliation of Water Supplied Through the Intertie," currently reads as follows:

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.

Such section is hereby amended in its entirety to read as follows:

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 Fiscal Year against any existing carryover balance from the previous Fiscal Year during the Annual Meeting provided for in this Agreement. A Party who holds a credit after the annual reconciliation (i.e., is owed water by the other Party due to deliveries that it made to that other Party during the previous Fiscal Year(s)) may (1) carry the credit forward into the next Fiscal Year subject to the next annual reconciliation; or (2) request from the other Party a delivery of the same quantity of water that it is owed (“reimbursement water”) under a schedule and in a manner agreed to by the Parties.

Notwithstanding the foregoing, a credit for water may not be carried forward for more than five (5) consecutive Fiscal Years without the agreement of both of the Parties. If both Parties do not agree to carry it forward more than five (5) consecutive Fiscal Years, the Party who holds the credit may request from the other Party a financial payment for the quantity of water that it is owed (rather than a delivery of that quantity of water under a schedule and in a manner agreed to by the Parties, which would be the default), notwithstanding the provision in Section 16 of this Agreement regarding the Parties’ intent that water supplied through the Intertie shall be reimbursed with water received through the Intertie. If such a request is made, the other 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 2 Basic Water User Charge” and the “Treated Water Surcharge” rates in effect at the time of exchange. The City’s wholesale rate shall be the “Schedule W-25 – Wholesale Use With Long-Term Contract” rate in effect at the time of exchange, except that the monthly service charge shall not apply. The payment shall be made within ninety (90) days of the request of the Party who holds the credit.

### **Article 3      Effective Date**

Each of the modifications set forth in Article 2 shall be effective on and after the date of this Amendment, subject to the approval of the San Francisco Public Utilities Commission, San Francisco Board of Supervisors, and Santa Clara Valley Water District Board of Directors.

### **Article 4      Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the City and the District have executed this Second Amendment as of the date first referenced above.

SANTA CLARA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
Rick Callender  
Chief Executive Officer

\_\_\_\_\_ Date

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: \_\_\_\_\_  
Dennis J. Herrera  
General Manager

\_\_\_\_\_ Date

Authorized by SFPUC Resolution No. \_\_\_\_\_  
\_\_\_\_\_ Date

Approved by Board of Supervisors Resolution No. \_\_\_\_\_  
\_\_\_\_\_ Date

APPROVED AS TO FORM:

David Chiu  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

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**

AGREEMENT BETWEEN  
CITY AND COUNTY OF SAN FRANCISCO      **SCVWD AGMT. NO. A2297**  
PUBLIC UTILITIES COMMISSION  
AND  
SANTA CLARA VALLEY WATER DISTRICT  
FOR  
LONG TERM OPERATION AND MAINTENANCE  
OF THE INTERTIE

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  
1000 El 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.

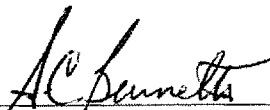
**32. CERTIFICATION AND APPROVAL BY SAN FRANCISCO**

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

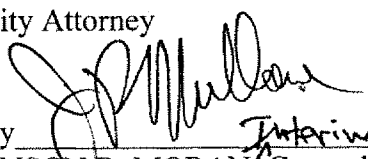
By   
\_\_\_\_\_  
Chairman, Board of Directors

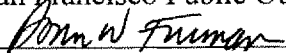
Attest:   
\_\_\_\_\_  
Clerk, Board of Directors

**PUBLIC UTILITIES COMMISSION**

Approved as to form:

LOUISE H. RENNE  
City Attorney

  
By \_\_\_\_\_  
ANSON B. MORAN, <sup>Interim</sup> 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

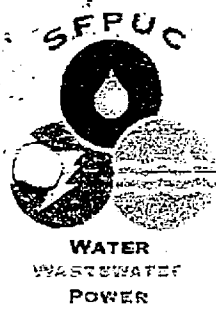
Approved by the Board of Supervisors for City and County of San Francisco

Resolution No. \_\_\_\_\_ 641-00

ADOPTED: \_\_\_\_\_ 7/24/2000

ATTEST: \_\_\_\_\_ Gloria L. Zeng  
Clerk of the Board of Supervisors

*Heron*



**SAN FRANCISCO PUBLIC UTILITIES COMMISSION**

1000 El Camino Real, Millbrae, CA 94030 • Tel. (650) 872-5900 • Fax (650) 872-5984 •



**GAVIN NEWSOM**  
MAYOR

**ANN MOLLER CAEN**  
PRESIDENT

**F.X. CROWLEY**  
VICE PRESIDENT

**FRANCESCA VIETOR**  
COMMISSIONER

**JULIET ELLIS**  
COMMISSIONER

**ED HARRINGTON**  
GENERAL MANAGER

March 17, 2009

Mr. Ray Yep  
Santa Clara Valley Water District  
5750 Almaden Express Way  
San Jose, CA 95118-3686

Dear Mr. ~~Yep~~ *Ray*

Enclosed for your file is an original First Amendment to the O&M Agreement between the SFPUC and the SCVWD for the Intertie.

Please contact me should you have any questions.

Sincerely,

David A. Briggs  
Division Manager

DAB:jf

cc: File: 3.9.1

FIRST AMENDMENT TO  
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

THIS FIRST AMENDMENT to that Agreement between the City and County of San Francisco, acting by and through its Public Utilities Commission ("City"), and the Santa Clara Valley Water District ("District"), for long term operation and maintenance of the Intertie dated December 21, 1999 ("the Agreement"), is made in the State of California on this 2rd day of March, 2009.

**RECITALS**

WHEREAS, in December 1999 the City and the District entered into separate agreements to (1) develop and (2) operate and maintain the Intertie; and

WHEREAS, since being put into service it has become clear that the Intertie may be more efficiently operated and maintained and that flexibility to choose between the Parties to do so is desirable; and

WHEREAS, the City is now undertaking its Water System Improvement Program, which places high burdens on current City operations personnel; and

WHEREAS, changes to the operation and maintenance provisions require that the Agreement be amended.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the Parties agree to amend the Agreement as follows:

1. Provision 4 entitled **MAINTENANCE, REPLACEMENT AND REPAIR OF THE INTERTIE** is amended to read :

The Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement and repair of the physical works of the Shared Project Facilities ("the O&M Party"). It is the Parties intent that the District shall be designated as the O&M Party until at least December 31, 2013. If mutually agreed, accomplishment of operation, maintenance, replacement and repair of physical works of the Shared Project Facilities may be contracted to a third party, with responsibility for contract administration by the City or the District as may be agreed. Routine operation, 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 operation, maintenance, repair, replacement or capital improvements during the Annual Meeting. Such plan shall include a contingency fund. The District or 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. 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.

2. Provision 15 entitled **PAYMENTS FOR OPERATIONS AND MAINTENANCE OF INTERTIE** is amended as follows:

The O&M Party shall have lead responsibility for reconciliation of joint costs associated with the Intertie. The non-O&M Party shall provide the O&M Party with a quarterly accounting of the non-O&M Party's joint cost expenditures for inclusion by the O&M Party in its accounting for billing and invoicing of joint costs for the Intertie.

- (a) The O&M Party shall bill the non-O&M Party quarterly and include the supporting accounting system documentation as appropriate.
- (b) The O&M Party's invoices to the non-O&M Party shall include sufficiently detailed information to explain the types of joint costs incurred during the billing period. The O&M Party shall provide clarifications of invoices to the non-O&M Party upon written request.

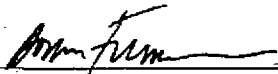
- (c) All payments shall be due within 60 days after the date of the O&M Party's billing or if the non-O&M Party has requested a clarification of an invoice in writing within 30 days of the O&M Party's billing, within 30 days of the O&M Party's written clarification.
- (d) Interest shall be charged for all delinquent payments. The non-O&M Party shall pay the O&M Party accrued interest on all overdue payments at the rate of 0.5 percent per month from the due date to the date of payment.

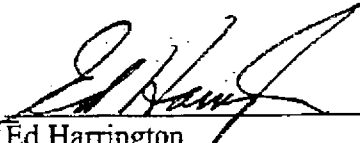
The frequency of reporting and billings may be modified upon mutual agreement and written confirmation, provided however that the reporting/billing cycle shall be no less than one year.

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

CITY AND COUNTY OF SAN FRANCISCO

Approved as to Form:  
Dennis J. Herrera  
City Attorney

  
\_\_\_\_\_  
Donn Furman  
Deputy City Attorney

  
\_\_\_\_\_  
Ed Harrington  
General Manager  
Public Utilities Commission

Approved by Public Utilities Commission

Approved by Board of Supervisors

Resolution No. 08-0223

Resolution No. 60-09

Adopted: 12-9-08

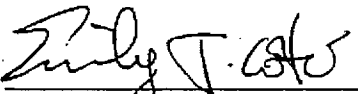
Adopted: 2-24-09


Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

SANTA CLARA VALLEY WATER DISTRICT

Approved as to Form:

  
\_\_\_\_\_  
Emily J. Cole  
Senior Assistant District Counsel  
Santa Clara Valley Water District

  
\_\_\_\_\_  
Olga Martin Steele  
Chief Operating Officer  
Santa Clara Valley Water District

# PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 08-0223

WHEREAS, in December 1999 the City and the Santa Clara Valley Water District (SCVWD) entered into separate agreements to (1) develop and (2) operate and maintain the Intertie; and

WHEREAS, since being put into service it has become clear that the Intertie may be more efficiently operated and maintained and that flexibility to choose between the Parties to do so is desirable; and

WHEREAS, the City is now undertaking its Water System Improvement Program, which places high burdens on current City operations personnel; and

WHEREAS, changes to the operation and maintenance provisions require that the Agreement be amended; and

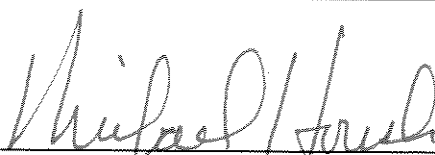
WHEREAS, implementation of the amendment will reduce the burden on City operations personnel and will have no fiscal impact;

WHEREAS, the term of the amendment is anticipated to begin on January 1, 2009 and end on December 31, 2013 and the total duration of this agreement is sixty (60) months; now, therefore, be it

RESOLVED, That this Commission hereby (1) authorizes the General Manager of the San Francisco Public Utilities Commission (SFPUC) to execute on behalf of the City and County of San Francisco, a First Amendment to the Agreement between the SFPUC and SCVWD for operation and maintenance of the Intertie to transfer maintenance responsibility from the SFPUC to SCVWD, and (2) recommends the Board of Supervisors approve the First Amendment pursuant to Charter section 9.118.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of*

December 9, 2008

  
Secretary, Public Utilities Commission



## PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 00-0033

**WHEREAS**, These facilities include the construction of a 40 mgd pumping station, chemical treatment facilities, a connecting 42" pipeline, and appurtenances in the City of Milpitas to connect Bay Division Pipelines No. 3 and 4 to the Santa Clara Valley Water District water transmission facilities; and

**WHEREAS**, The City of Milpitas requires an "Encroachment Permit" for the construction and access for the future maintenance of these facilities; and

**WHEREAS**, The MBE/WBE subcontracting goals for this contract have been approved by the HRC Contract Compliance Officer assigned to monitor this Contract; and

**WHEREAS**, The Department of City Planning has determined that the work to be performed under this Contract could not have a significant effect on the environment and adopted and issued a Mitigated Negative Declaration on 11/24/99; and

**WHEREAS**, The project shall be phased such that it is contracted with funds that are available in Project CUW 131, with funds provided by SCVWD prior to certification by the City's Controller, and the balance included in the budget request for FY 00/01; and

**WHEREAS**, The advertising of this Contract at this time is on the Critical Path in Santa Clara Valley Water District's schedule for complying with EPA rules deadlines; and

**WHEREAS**, The transaction for property and easement rights purchase will continue and the Contract shall not be awarded until completion of this transaction; and

**WHEREAS**, The development and operation and maintenance agreements for this work have been approved and signed by the SCVWD; and

**WHEREAS**, These two agreements will require approval by the SFPUC and SF Board of Supervisors and the Contract shall not be awarded until these approvals have been obtained; now, therefore, be it

**RESOLVED**, That this Commission hereby approves the final Plans and Specifications and authorizes bid call for San Francisco Water Department Contract No. WD-2295, SFWD / SCVWD Intertie Pipeline and Pump Station; and be it

**FURTHER RESOLVED**, That this Commission hereby approves the terms and conditions and authorizes the execution of City of Milpitas Encroachment Permit No. 99136; and be it

**FURTHER RESOLVED,** That this Commission hereby approves the two agreements between the City and County of San Francisco Public Utilities Commission and the Santa Clara Valley Water District entitled "Development of an Intertie Facility" and "Long Term Operation and Maintenance of the Intertie" and authorizes the UEB to process the approval of these agreements by the San Francisco Board of Supervisors.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of* JAN 25 2000

*Romaine A. Boldt*  
\_\_\_\_\_  
*Secretary, Public Utilities Commission*

# PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 24-0047

WHEREAS, On December 21, 1999, by Resolution No. 00-0033, the San Francisco Public Utilities Commission (SFPUC) and the Santa Clara Valley Water District (District) entered into an agreement to develop an interconnection of their respective water supply systems (Intertie) which was then approved by the San Francisco Board of Supervisors (Resolution No. 641-00, dated July 24, 2000) and the Santa Clara Valley Water District Board of Directors (December 21, 1999); and

WHEREAS, On December 21, 1999, the SFPUC and the District also entered into the Agreement for Long Term Operation and Maintenance of the Intertie (O&M Agreement), as authorized by Commission Resolution No. 00-0033, dated January 25, 2000; San Francisco Board of Supervisors Resolution No. 641-00, dated July 24, 2000; and Santa Clara Valley Water District Board of Directors approved motion, dated December 21, 1999; and

WHEREAS, Section 3 of the O&M Agreement provided, in part, that “[e]ither Party may operate the physical works of the Intertie ... for the delivery of water with the concurrence of the other Party,” and Section 4 of the Agreement provided, in part, that “[t]he City shall have primary responsibility for routine maintenance, replacement and repair of the physical works of the Shared Project Facilities,” or Intertie, as defined in the Agreement; and

WHEREAS, On March 2, 2009, the SFPUC and the District entered into the First Amendment to the O&M Agreement (First Amendment), as authorized by Commission Resolution No. 08-0223, dated December 9, 2008; and San Francisco Board of Supervisors Resolution No. 60-09, dated February 24, 2009; and

WHEREAS, The First Amendment amended Section 4 of the O&M Agreement, in part, to provide that “[t]he Parties shall jointly designate one of them to have primary responsibility for routine operation, maintenance, replacement, and repair of the physical works of the Shared Project Facilities” – the newly defined “O&M Party” – and to designate the District as the O&M Party until at least December 31, 2013, without modifying either Party’s ability to operate the Intertie under Section 3 of the Agreement; and

WHEREAS, The First Amendment also amended Section 15 of the Agreement to provide that the O&M Party, rather than the SFPUC, shall have lead responsibility for reconciliation of joint costs associated with the Intertie; and

WHEREAS, Before December 31, 2013, the Parties agreed to jointly designate the SFPUC the O&M Party starting on January 1, 2014, pursuant to Section 4 of the Agreement, as amended, and the SFPUC has, in accordance, remained the O&M Party since that date; and

WHEREAS, The SFPUC and the District now agree that the Intertie may be more efficiently operated and maintained by the District, given its proximity to the Intertie and the impact of the Intertie’s operation on the District’s system, and the District should thus be the O&M Party; and

WHEREAS, Approval of the Second Amendment to the O&M Agreement does not constitute a “project” under the California Environmental Quality Act (CEQA) Guidelines Section 15378 because the Amendment is an organizational or administrative governmental activity that will not result in direct or indirect physical changes in the environment, is a continuing administrative and maintenance activity, and is a government fiscal activity that does not involve a commitment to a specific project which may result in a potentially significant physical impact on the environment; and

WHEREAS, The SFPUC and the District propose to amend the Agreement again in order to re-designate the District as the O&M Party from July 1, 2024 through June 30, 2029, with the SFPUC and the District meeting and conferring before the end of this five-year period to determine, by mutual written agreement, which of them shall be the O&M Party beyond June 30, 2029, under Section 4 of the Agreement (Second Amendment); and

WHEREAS, The Second Amendment would also (1) designate the O&M Party with primary responsibility for maintenance of operating permits and preparation of annual reports or plans under Section 5 of the Agreement; (2) provide that all costs associated with the operation of the Intertie to deliver “reimbursement water” shall be borne by the Party delivering that water under Section 14 of the Agreement; and (3) revise the terms for the annual reconciliation of water supplied through the Intertie under Section 17 of the Agreement; now, therefore, be it

RESOLVED, That this Commission hereby approves the Second Amendment to the Agreement between the San Francisco Public Utilities Commission and the Santa Clara Valley Water District for Long-Term Operation and Maintenance of the Intertie, subject to Board of Supervisors approval under Charter Section 9.118.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 27, 2024.*

  
Secretary, Public Utilities Commission

1 [Santa Clara Valley Water District for Development of an Intertie Facility - Approval]  
2 AUTHORIZING THE GENERAL MANAGER OF THE PUBLIC UTILITIES  
3 COMMISSION TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY AND  
4 COUNTY OF SAN FRANCISCO

5 WHEREAS, These facilities include the construction of a 40 million gallons per  
6 day pumping station, chemical treatment facilities, a connecting 42 inch pipeline and  
7 appurtenances in the City of Milpitas to connect Bay Division Pipelines No. 3 and 4 to  
8 the Santa Clara Valley Water District water transmission facilities; and

9 WHEREAS, The City of Milpitas requires an "Encroachment Permit" for the  
10 construction and access for the future maintenance of these facilities; and

11 WHEREAS, The Department of City Planning has determined the work to be  
12 performed under this Contract could not have a significant effect on the environment  
13 and adopted and issued a Mitigated Negative Declaration on 11/24/99; and

14 WHEREAS, The development and operation and maintenance agreements for  
15 this work have been approved and signed by the SCVWD; and

16 WHEREAS, These two agreements will require approval by the SFPUC and SF  
17 Board of Supervisors and the Contract shall not be awarded until these approvals have  
18 been obtained; now, therefore be it

19 WHEREAS, That this SFPUC approved the final Plans and Specifications and  
20 authorizes bid call for San Francisco Water Department Contract No. WD-2295,  
21 SFWD/SCVWD Intertie Pipeline and Pump Station; and be it

22 WHEREAS, That this SFPUC approved the terms and conditions and  
23 authorizes the execution of the City of Milpitas Encroachment Permit No. 99136; and  
24 be it

25 BE IT RESOLVED, That the Board of Supervisors hereby approves the two

1 agreements between the City and County of San Francisco Public Utilities Commission  
2 and the Santa Clara Valley Water District entitled "Development of an Intertie  
3 Facility" and "Long Term Operation and Maintenance of the Intertie" and  
4 authorizes the General Manager of the SFPUC to execute these agreements by the  
5 San Francisco Board of Supervisors.  
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# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

## Resolution

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**File Number:** 001137

**Date Passed:**

Resolution authorizing the General Manager of the Public Utilities Commission to execute an agreement on behalf of the City and County of San Francisco. (Two agreements with Santa Clara Valley Water District for the development and operation/maintenance of the Intertie Pipeline and Pump Station Project in the City of Milpitas.)

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July 24, 2000 Board of Supervisors — ADOPTED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

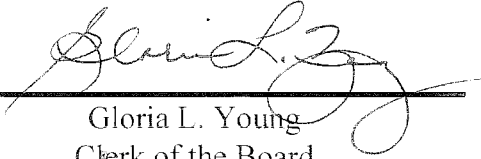
File No. 001137

I hereby certify that the foregoing Resolution was ADOPTED on July 24, 2000 by the Board of Supervisors of the City and County of San Francisco.

JUL 26 2000

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Date Approved

  
Gloria L. Young  
Clerk of the Board

  
Mayor Willie L. Brown Jr.



1 [Resolution approving First Amendment to Agreement between the San Francisco Public  
2 Utilities Commission and Santa Clara Valley Water District for Operation and Maintenance of  
3 the Intertie pursuant to Charter section 9.118.]

4 **Resolution approving First Amendment to the Operation and Maintenance Agreement**  
5 **between the San Francisco Public Utilities Commission (SFPUC) and Santa Clara**  
6 **Valley Water District (SCVWD) for the Intertie pursuant to Charter section 9.118.**

7  
8 WHEREAS, The SFPUC is responsible for the regional water system, which supplies  
9 water to 2.5 million users in the San Francisco Bay area; and

10  
11 WHEREAS, In December 1999 the SFPUC and the Santa Clara Valley Water District  
12 entered into separate agreements to (1) develop and (2) operate and maintain an Intertie  
13 between their water systems to deliver water to each other during emergencies and critical  
14 maintenance work; and

15  
16 WHEREAS, Since being put into service it has become clear the Intertie may be more  
17 efficiently operated and maintained if the Parties have the flexibility to choose between  
18 themselves to perform such work; and

19  
20 WHEREAS, Changes to the operation and maintenance provisions require that the  
21 Agreement be amended; now, therefore, be it

22  
23 **RESOLVED**, That the Board of Supervisors approves the Agreement to Implement and  
24 Term Sheet.

25



City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Tails  
Resolution

File Number: 090043

Date Passed:

Resolution approving First Amendment to the Operation and Maintenance Agreement between the San Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District (SCVWD) for the Interie pursuant to Charter Section 9.118.

February 24, 2009 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090043

I hereby certify that the foregoing Resolution was ADOPTED on February 24, 2009 by the Board of Supervisors of the City and County of San Francisco.

3/2/2009  
Date/Approved

Angela Calvillo  
Clerk of the Board

  
Mayor Gavin Newsom



# San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

**FROM: Jeremy Spitz, Policy and Government Affairs**

**DATE: March 1, 2024**

**SUBJECT: [Agreement Amendment - Santa Clara Valley Water District - Long-Term Operation and Maintenance of Intertie Facility]**

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Please see attached a proposed Resolution approving the Second Amendment to the Agreement between the San Francisco Public Utilities Commission and Santa Clara Valley Water District for Long-Term Operation and Maintenance of the Intertie located in Milpitas pursuant to Charter Section 9.118.

The following is a list of accompanying documents:

- Proposed Resolution (Word Doc Version)
- SFPUC Resolution No.00-0033 (PDF Version)
- 1999.12.21 Final SCVWD Intertie O&M Agreement EXECUTED (PDF Version)
- SFPUC Resolution No.08-0223 (PDF Version)
- First Amendment to SCVWD Intertie O&M Agreement 2009 EXECUTED (PDF Version)
- SFPUC Resolution No.24-0047 (PDF Version)
- Second Amendment (Word Doc Version)

Please contact Jeremy Spitz at [jspitz@sfgwater.org](mailto:jspitz@sfgwater.org) if you need any additional information on these items.

**London N. Breed**  
Mayor

**Tim Paulson**  
President

**Anthony Rivera**  
Vice President

**Newsha K. Ajami**  
Commissioner

**Sophie Maxwell**  
Commissioner

**Kate H. Stacy**  
Commissioner

**Dennis J. Herrera**  
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.

