CITY OF SANTA CLARA

www.santaclaraca.gov

CITY COUNCIL MEETING

AGENDA

A complete agenda packet with back-up reports is available at either City Library beginning Saturday before the Tuesday meeting or at the City Clerk's Office on weekdays. A complete agenda packet is also available at the City Council meeting and on the City's website.

May 20, 2014

6:00 pm

Closed Session

Council Conference Room

City Council/City Council acting as the Governing Board of the
Successor Agency to the City of Santa Clara Redevelopment Agency
Conference with Legal Counsel - Existing Litigation
Pursuant to Government Code Section 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City Santa Clara, et al.
Sacramento County Superior Court Case No. 34-2013-80001396
and
Conference with Legal Counsel - Existing Litigation
Pursuant to Government Code Section 54956.9(a)
James Weaver v. City of Santa Clara, et al.
United States District Court Case No. CV12-06334 PSG

REGULAR MEETING
7:00 PM in the City Hall Council Chambers

APPEAL OF HEARING DECISIONS OF THE CITY COUNCIL MUST BE MADE TO THE SUPERIOR COURT WITHIN 90 CALENDAR DAYS OF FINAL ACTION. BECAUSE OF THE AGENDA PROVISION FOR RECONSIDERATION, FINAL ACTION IS DEEMED TO OCCUR AT THE END OF THE NEXT REGULAR MEETING PURSUANT TO CITY COUNCIL POLICY (P&P 042). (CODE OF CIVIL PROCEDURE SECTION 1094.6)

1. PLEDGE OF ALLEGIANCE AND STATEMENT OF VALUES:

2. ROLL CALL:

3. APPROVAL OF MINUTES:

A. April 22, 2014.

4. CONTINUANCE/EXCEPTIONS:

5. SPECIAL ORDER OF BUSINESS:

A. Recognition of outgoing Youth Commission Members.

B. Appointment of the 2014-15 Youth Commission.

C. Presentation of a Youth Commission scholarship.

6. UNFINISHED BUSINESS:

A. Possible Reconsideration of Actions Taken at Immediately Preceding Meeting. (See Summary of Actions for potential reconsideration, which is attached to the posted Agenda and is in the Agenda Packet Binder in the Council Chambers.)

B. Adoption of a Negative Declaration pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15050(b) and adoption of Ordinance No. 1925 to add Article V (Polystyrene Foam Disposable Service Ware) to Chapter 13.20 (Storm Drains and Discharges) to Title 13 (Public Services) of the City Code to prohibit the use of polystyrene foam disposable food service ware.

7. CONSENT CALENDAR:

[Items listed on the CONSENT CALENDAR are considered routine and will be adopted by one motion. There will be no separate discussion of the items on the CONSENT CALENDAR unless discussion is requested by a member of the Council, staff, or public. If so requested, that item will be removed from the CONSENT CALENDAR and considered under CONSENT ITEMS PULLED FOR DISCUSSION.]

A. **Departmental Reports**

1. Note and file the Departmental Activity Report for the month of February 2014.
2. Approval for the use of City Electric forces for the installation of facilities at 2727 Augustine Drive.
3. Acceptance of the Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2013-14 Third Quarter.
4. Approval of the job description for Utility Business Systems Manager, set the control point at $11,370 per month, and add this specification to the City's Conflict of Interest Code, Disclosure Category 1.
5. Authorization to accept the donations given in support of the 27th Annual Arbor Day/Earth Day celebration held on April 25, 2014.
6. Approval of the revised job description for Per Diem Police Officer Special Events As Needed.

7. Pass to print an Ordinance amending Chapter 5.35 (Taxicabs) of Title 5 (Business Licenses and Regulations) of the City Code to ensure that pedicabs are regulated like taxicabs.
8. Adoption of a Resolution approving a Water Supply Assessment for the proposed Santa Clara Square development located at 2455-2727 Augustine Drive and 3333 Bowers Avenue.

B. Agreements

1. Approval of a Call Agreement with SBW Consulting and Call No. 14-1, in an amount not to exceed $101,250, for the CoolerMiser Direct Install Program third party energy efficiency program.
2. Approval of Call No. 14-1 for Professional Services with Energy & Resource Solutions, Inc., in an amount not to exceed $1,090,333, for management and administration of business energy efficiency public benefit programs for Fiscal Year 2014-15.
3. Approval of Amendment No. 1 to Work for Others Agreement No. 64556 with Battelle Memorial Institute, Pacific Northwest Division, to extend the termination an additional three (3) weeks or until June 30, 2014, at no additional cost to the City, to complete a study on the potential impacts of increasing the use of solid state lighting with lighting controls.
4. Approval of a Fiber Lease Agreement with BarnesandNoble.com, LLC for long term use of dark fiber routes.
5. Approval of Amendment No. 2 to the Agreement for Design Professional Services with Schaaf and Wheeler, Consulting Civil Engineers and Service Order No. 6, in an amount not to exceed $130,000 for a total not to exceed amount of $280,000, to provide various specialized engineering services.
6. Approval of Amendment No. 4 to the agreement for Design Professional Services with GHD, Inc. and Service Order No. 9, in an amount not to exceed $390,000 for a total not to exceed amount of $901,000, to provide various specialized engineering services.

C. Reports for Information and Possible Action

1. Status of 166 Saratoga Project - Bayto Townhomes.

D. Minutes to Note and File

E. Routine Written Petitions for Approval

8. ITEMS SET FOR HEARING:

[Planning Commission items not being appealed, or which are not related to an appeal, will be heard under BOARDS AND COMMISSIONS FOR ACTION.] If you challenge a City Council land use decision in court, you may be limited to raising only those issues you or someone else raised at this hearing before the City Council or in written correspondence delivered to the City at, or prior to, the City Council hearing on the matter. (California Government Code Section 65009)

A. Adoption of a Resolution approving Water Rate Schedule 2014-01, Recycled Water Rate Schedule 2014-02 setting the water rates for Fiscal Year 2014-15, effective immediately for water delivered on or after June 1, 2014 and billed beginning July 1, 2014; and adoption of a Resolution approving Sewer Service Schedules S-14 setting sewer service charges for Fiscal Year 2014-15, effective immediately for services provided on or after June 1, 2014 and billed beginning July 1, 2014.

9. BIDS AND PROPOSALS:

A. Award the Public Works Contract for the Street Corporation Yard Bunker Wash Area Sewer Connection Project to KJ Woods Construction, Inc., in the amount of $88,000, and authorization to execute change orders up to approximately 10% of the original contract price, or $8,800 for a total amount not to exceed $96,800 (CE 13-14-07).

10. BOARDS AND COMMISSIONS FOR ACTION:

11. CONSENT ITEMS PULLED FOR DISCUSSION:

12. PUBLIC PRESENTATIONS:

This item is reserved for persons to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City. The law does not permit Council action on, or extended discussion of, any item not on the agenda except under special circumstances. The Council, or staff, may briefly respond to statements made or questions posed, and the Council may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on forms available by the door in the Council Chambers.

13. REPORTS FOR COUNCIL ACTION:

A. Acceptance and appropriation of a donation from the White Living Trust, in the amount of $10,000, for Senior Center activities and authorization to transmit a letter of appreciation.

B. Approval of an amendment to the 2013-14 Annual Plan for use of Community Development Block Grant (CDBG) and Home Investment Partnerships Act Entitlement Funds (HOME), in the amount of $9,000, to continue to fund the special needs transportation program through the end of the fiscal year; approval of the transfer and appropriation of funds; and approval of Amendment No. 1 to the Public Service Grant Agreement with Outreach & Escort, Inc., and all related documents, to provide special needs transportation services.

C. Appointment of an alternate to serve on the Neighborhood Preservation Ordinance Ad-hoc Committee and provide any additional direction to staff.

D. Adoption of a Resolution authorizing the negotiation and execution of a Purchase and Sale Agreement with Bradford Manufacturing Company for the acquisition of approximately 8.75 acres of vacant land located at Reed and Grant Streets for future electric utility use; approval of the establishment of the Capital Improvement Project 2412 - Reed Street Property for Future Utility Use; and approval of the appropriation of funds, in the amount of $9,000,000.

E. Adoption of a Resolution authorizing the execution and delivery of the Loan Agreement between Banc of America Preferred Funding Corporation for the financing of the Phase Shifting Transformer Project and other related expenditures and documents, subject to final review by the City Attorney, to complete the transaction.

14. BILLS AND CLAIMS/PROGRESS PAYMENTS:

(Lists are available in the Council Office and the City Clerk's Office.)

A. Approval of Bills and Claims and Progress Payments.

15. REPORTS OF COUNCILORS AND SPECIAL COUNCIL COMMITTEES:

A. Reports regarding conference attendance, if any.

B. Approval to delegate authority to the City Manager to authorize and grant merit increases to elected full-time positions.

16. CITY MANAGER REPORTS:

17. CLOSED SESSION MATTERS:

A. City Attorney Reports:

B. Approval to set June 10, 2014 at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.,* Sacramento County Superior Court Case No. 34-2013-80001396.

18. ADJOURNMENT:

A. To Tuesday evening, **June 10, 2014** at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

5/20/14

CLOSED SESSION NOTICE

6:00PM

City of Santa Clara, California

Santa Clara All-America City 2001

The **CITY COUNCIL OF THE CITY OF SANTA CLARA** will meet in closed session on **Tuesday, May 20, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
James Weaver v. City of Santa Clara, et al., United States District Court Case No. CV12-06334 PSG

Date: May 16, 2014

RICHARD E. NOSKY, JR.
City Attorney

I:\COUNCIL\CLOSED SESSION AND SPECIAL MEETINGS\2014\05-20-14 Notice City Exist Lit(2).doc

5/20/14

6:00PM

CLOSED SESSION NOTICE

Successor Agency to the City of Santa Clara
Redevelopment Agency

Santa Clara
All-America City
2001

The **GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY** will meet in closed session on **Tuesday, May 20, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

Date: May 16, 2014

RICHARD E. NOSKY, JR.
Successor Agency Counsel

I:\COUNCIL\CLOSED SESSION AND SPECIAL MEETINGS\2014\05-20-14 Notice Succ Agcy Exist Lit.doc

5/20/14

3A

MINUTES OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA
FOR MEETING HELD ON TUESDAY EVENING, APRIL 22, 2014

The City Council of the City of Santa Clara met at 5:00 pm for a Development Review Study Session in the City Hall Council Chambers for a Development Review Study Session for File: SummerHill Mixed Use Development at Lawrence Station Area; Location: 3305 Kifer, 3505 Kifer Road, 2925 Copper Road, 3050 Copper Road, 3500 Ryder Street, 3535 Kifer Road, 2900-2995 Gordon Avenue, approximately 27 acres on the north side of Kifer Road, east of Lawrence Expressway; APN's 216-33-001, 216-34-041, 216-34-046, 216-34-047, 216-34-051, 216-34-066, 216-34-069, 216-34-070, 216-34-072 and 216-34-073; Request: Review of conceptual plan to redevelop existing industrial properties for housing and mixed use at moderate and high-density in close proximity to the Lawrence Caltrain Station in accordance with General Plan 2015 Land Use goals. With a quorum present, the Director of Planning and Inspection made an electronic presentation regarding the Lawrence Station future area. Jonathon Fearn, representing SummerHill Homes, and Manny Gonzalez, representing KTGY Architects, then addressed the Council and made an electronic presentation regarding the proposed project. Mr. Fearn and Mr. Gonzalez then answered Council questions and Council comments were made.

With no public comment, the Council then met at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit # 4 - City of Santa Clara Professional Engineers; Units # 5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit # 9 - Miscellaneous Unclassified Management Employees; Unit # 9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit # 10 - PSNSEA (Public Safety Non-Sworn Employees Association; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 097-01-039, APN 097-01-073, APN 104-01-102 and APN 104-03-036; Negotiating Party(ies): William A. Witte, President, Related California; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, APN 104-03-038, APN 104-03-039 and APN 104-03-040;

DRAFT

Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 224-28-035; Negotiating Party(ies): Don Jessup, Silicon Valley Associates; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 224-02-002, 224-02-013, 224-02-014, 224-02-020 and 224-02-023; Negotiating Party(ies): Steve Zamudio, Colliers International; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: Coronado Drive, between Stender Way and Central Expressway, Santa Clara, CA; Negotiating Party(ies): Jay DiMaggio, CoreSite; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: 90 N. Winchester Blvd., APN 303-17-047, 303-17-048 and 303-17-049; Negotiating Party(ies): SummerHill Homes; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment); Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); Prudential Insurance Company of America v. City of Santa Clara (Paramount Parks, Inc., Cedar Fair Southwest, Inc., Real Parties in Interest); Santa Clara County Superior Court Case No. 112CV226740; City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al;* Sacramento County Superior Court Case No. 34-2013-80001396; and Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel - Anticipated Litigation pursuant to Government Code Section 54956.9(a); Potential initiation of litigation: 1 potential case (City Attorney - 04/17/14).

The Council reconvened in the Council Chambers at 7:07 pm and the regular meeting was opened with the recitation of the Pledge of Allegiance and Statement of Values in the Council Chambers.

Present: Council Members Debi Davis, Lisa M. Gillmor, Patrick Kolstad, Patricia M. Mahan, Jerry Marsalli and Teresa O'Neill. Absent: Mayor Jamie L. Matthews (present for the Development Study Session and Closed Session only).

Staff present: City Manager, Assistant City Manager - Alan Kurotori, Assistant City Manager - Sheila Tucker, Director of Planning and Inspection, Director of Public Works/City Engineer, City Attorney and City Clerk/Auditor.

Council Member Kolstad presided over the meeting.

2. **MOTION** was made by Gillmor, seconded and unanimously carried (Matthews absent), that the Council **excuse** Mayor Matthews from attendance at this evening's meeting.

3A. **MOTION** was made by Gillmor, seconded and unanimously carried (Matthews absent), that the **Minutes** for the meeting of **March 18, 2014** be adopted as written.

3B. In consideration of the **Minutes** for the meeting of **March 25, 2014**, **MOTION** was made by Gillmor, seconded and unanimously carried (Matthews absent), that the Council **note and file** the Minutes. Clysta Seney (provided handout) addressed the Council requesting a revision within the Minutes for agenda item 12D, Approval to establish a new Fiscal Year 2013-14 Capital Improvement Budget Project (CIP) entitled, Youth Soccer Fields & Athletic Facilities and authorization to transfer and appropriate funds, in the amount of $2,000,000, for the project, to reflect a comment made that the Ulistac Natural Area not be harmed for soccer fields. The City Clerk made clarifying comments regarding the standard process and format for Council Minutes. By consensus, the Council referred the Minutes to the City Clerk to review the accuracy of the public comment for the item.

4. 7A.8 **MOTION** was made by Gillmor, seconded and unanimously carried (Matthews absent), that the Council **continue** to May 6, 2014 the consideration to pass to print an Ordinance to add Article V (**Polystyrene Foam Disposable Service Ware**) to Chapter 13.20 (Storm Drains and Discharges) to Title 13 (Public Services) of the City Code to **prohibit the use** of polystyrene foam disposable food service ware.

DRAFT

5A. As a Special Order of Business, the Council proceeded with the **recognition** of the **Reserve Police Officer Unit** of the **Santa Clara Police Department** for their continuous volunteer efforts to the City of Santa Clara. The Chief of Police reviewed his memo (04/02/14) and thanked all Reserve Officers for their dedicated efforts. He then presented Reserve Captain, Bob Ciraulo, with a plaque. There was a standing ovation. Photographs were then taken.

5B. Also as a Special Order of Business, the Director of Human Resources introduced Beverly Silva, Chair of the **Civil Service Commission**, who made an electronic presentation **promoting the vacancy** on the Civil Service Commission.

5C. Also as a Special Order of Business, Michael O'Halloran, Chair of the Parks and Recreation Commission, made an electronic presentation **promoting the vacancy** on the **Parks and Recreation Commission**.

6B. As an item of Unfinished Business, the Council proceeded to consider the **2325 Park Avenue Project**, including a review of process and **City regulation** of **boarding houses** and **second units** and staff recommendation to direct the establishment of an ad hoc committee, including any direction on its composition, to review available resources and make recommendations to the Council on the zoning code for the development and review process for single family home development, with an emphasis on addressing student housing impacts on neighborhoods within the proximity of Santa Clara University. The City Manager introduced the item and then the Director of Planning and Inspection reviewed his memo (04/22/14). The Director of Planning and Inspection, the City Attorney and the City Manager answered Council questions. The following people addressed the Council with comments of concern: Nick Lallas (electronic presentation), Joe Hastings, Mark Kelsey, Bob O'Keefe, Susan Colbeck, Veronica Lallas, Kathy Kelsey, Chris Lasserot, Sarah Doty, Stacey Thorn, Lou Faria, Christine Fawn, Clarence Long, Mark Pagan, Vern Deto, Alyssa Thompson, David Conoscenti, Stan Carlson, Carl Hoffman, Debbie Van Overn, Arlene Passeta, Deborah Costa, Linda Calman and Kevin Park. A Council discussion followed. The City Manager and the City Attorney answered further Council questions. Following clarifying comments, **MOTION** was made by Davis, seconded and carried with Mahan dissenting (Matthews absent), that the Council establish an ad-hoc committee comprised of Council Members Marsalli and O'Neill, two members from the Planning Commission, and one member of the Historical and Landmarks Commission. **MOTION** was then made by Mahan, seconded and unanimously carried (Matthews absent), that

DRAFT

the Council **direct** that, effective immediately, any additions or structural remodels on a single-family home of four bedrooms or more be submitted to the Architectural Review Committee on a City-wide basis. **MOTION** was made by Marsalli, seconded and unanimously carried (Matthews absent), that the Council **set** a Study Session at 5:00 pm on May 6, 2014 regarding the project located at 2325 Park Avenue.

7A.1 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Electric Utility's memo (04/08/14), the Council **set** the **salary** for **Utility Electrician** candidate Long Vu at Step 3, salary range D1-32.

7A.2 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Electric Utility's memo (04/08/14), the Council **set** the **salary** for **Utility Electrician** candidate Christopher Divens at Step 3, salary range D1-32.

7A.3 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works/City Engineer's memo (04/04/14), the Council **approve** the **plans and specifications** for the **Santa Clara Various Streets and Roads Project for Benton Street, Lincoln Street, and Los Padres Boulevard**; **authorize** the City Manager to make minor modifications, if necessary; and **authorize** the advertisement for bids (CE 13-14-04).

7A.4 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Human Resources' memo (03/14/14), the Council **approve** the **revised job description** for **Purchasing Division Manager**.

7A.5 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Finance/Assistant City Manager's memo (04/08/14), the Council **accept** the **Monthly Financial Status Reports** for **February 2014**.

7A.6 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Electric Utility's memo (04/08/14), the Council **approve** the use of **City Electric Forces** for the installation of facilities at 2060 El Camino Real, 842 Madison Street and Palm 207P Feeder Extension, Great America Parkway to rear of Levi's Stadium.

DRAFT

7A.7 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Human Resources Division Manager's memo (03/10/14), the Council **approve** the **Compromise and Release**, as recommended by the City's Workers' Compensation legal counsel, to settle the claims for injuries Retired Fire Captain Mr. Robert List sustained on September 7, 2009, on August 9, 2010 and cumulatively from December 22, 2009 through December 22, 2010.

7A.9 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the City Attorney's memo (04/22/14), the Council **adopt Resolution No. 14-8125** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING THE POLITICAL CAMPAIGN VOLUNTARY EXPENDITURE LIMIT AND THE CAMPAIGN CONTRIBUTION LIMIT FOR THE NOVEMBER 4, 2014 CITY ELECTION PURSUANT TO CHAPTER 2.130 OF THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" which establishes the **Political Campaign Voluntary Expenditure Limit** at $38,300 and adjusts the Campaign Contribution Limit to $520 for candidates who accept the voluntary expenditure limit and $260 for those who do not for the **November 4, 2014 City election**.

7A.10 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the City Attorney's memo (04/22/14), the Council **adopt Ordinance No. 1924**, entitled, "AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 2.130 (POLITICAL CAMPAIGN FINANCE REFORM ACT OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" which amends Chapter 2.130 (Political Campaign Finance Reform Act) of Title 2 (Administration and Personnel) of the City Code to reflect updates to the **Political Campaign Finance Reform Act**.

7B.1 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Water and Sewer Utilities' memo (03/25/14), the Council **approve**, and authorize the City Manager to execute, **approve** an **Agreement for Professional Services** with **GHD, Inc.**, in an amount not to exceed $464,421, for a **Supervisory Control and Data Acquisition (SCADA) Master Plan**.

7B.2 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Electric Utility's memo (04/08/14), the Council **approve**, and authorize the City Manager to execute, an **Electric Service Agreement** with **Nvidia Corporation** for the **purchase of electricity** on a long-term basis for certain discounted rates.

DRAFT

7B.3 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works/City Engineer's memo (04/14/14), the Council **approve**, and authorize the City Manager to execute, an **Agreement for the Performance of Services** with **VSS International, Inc.**, the lowest responsible and responsive proposer, in an amount not to exceed $210,073, for the **FY 2013-2014 Various City Streets Surface Reseal Project** and **authorize** the City Manager to execute change orders in connection with this project, in an amount not to exceed 10% of the contract price or $21,007.

7B.4 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works/City Engineer's memo (04/08/14), the Council **approve**, and authorize the City Manager to execute, **Amendment No. 1** to **Agreement No. A3650S** with the **Santa Clara Valley Water District (SCVWD)**, in an amount not to exceed $314,000, for **Stream Bank Erosion Repair** along San Tomas Aquino Creek at the Lake Santa Clara Pump Station Outfall.

7B.5 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works/City Engineer's memo (04/22/14), the Council **approve**, and authorize the City Manager to execute, an **Agreement and Covenant Running With the Land** with Tsung-Yen Lin, also known as Tom T Y Lin, to retain and maintain an existing overhang and portions of an existing building within the City-owned portion of El Camino Real at **3224 El Camino Real** and **authorize** the recordation of the Agreement with the County Recorder (APN 290-63-008; SC 18,651).

7C.1 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **note and file** the **Informational Memo** entitled, "Update on the implementation of the **paperless City Council agenda packet**" (City Clerk/City Auditor - 04/14/14).

7D.1 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **note and file** the **Minutes** of the **Planning Commission** for the meeting of **January 15, 2014** (Director of Planning and Inspection - 03/31/14).

7D.2 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **note and file** the **Minutes** of the **Historical and Landmarks Commission** for the meeting of **December 5, 2013** (Director of Planning and Inspection - 04/01/14).

DRAFT

7D.3 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **note and file** the **Minutes** of the **Cultural Commission** for the meeting of **February 3, 2014**.

7D.4 **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **note and file** the **Minutes** of the **Marketing Committee** for the meeting of **March 19, 2014**.

8A. PUBLIC HEARING: Council Member Kolstad opened the hearing for consideration of the project located at **777 Lawrence Expressway**, including adoption of a Resolution approving a **Tentative Parcel Map** and making the determination that the project is categorically exempt from California Environmental Quality Act (CEQA) under Guidelines 15315 (Class 15 - Minor Land Divisions) (PLN2013-10116). The Director of Planning and Inspection reviewed his memo (04/15/14) and made an electronic presentation. The applicant, Charles Smyth, addressed the Council with comments regarding the proposed project. Mr. Smyth and the Director of Planning and Inspection answered Council questions. With no further public comment, **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **close** the public hearing. **MOTION** was then made by Gillmor, seconded and unanimously carried (Matthews absent), that the Council **adopt Resolution No. 14-8126** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, TO APPROVE A TENTATIVE PARCEL MAP AT 777 LAWRENCE EXPRESSAY, SANTA CLARA, FOR TWO LOTS" which approves a Tentative Parcel Map and makes the determination that the project is categorically exempt from California Environmental Quality Act (CEQA) under Guidelines 15315 (Class 15 - Minor Land Divisions) (PLN2013-10116).

8B. PUBLIC HEARING: Council Member Kolstad opened the hearing for consideration of the **Municipal Fee Schedule Fiscal Year 2014-15**, including adoption of a Resolution adopting the Municipal Fee Schedule 2014-15 which imposes new fees, rates and charges; amends existing fees; and retains unchanged fees for various City departments, effective July 1, 2014. The Director of Finance/Assistant City Manager reviewed his (04/08/14) and made an electronic presentation regarding the Municipal Fee Schedule. He, the Director of Planning and Inspection, and the Director of Parks and Recreation answered Council questions. With no public comment, **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that the Council **close** the public hearing. A Council discussion followed. **MOTION** was then made by Gillmor, seconded and unanimously carried (Matthews absent), that the Council **adopt Resolution No. 14-8127** entitled, "A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA ADOPTING THE "CITY OF SANTA

DRAFT

CLARA MUNICIPAL FEE SCHEDULE 2014-15" WHICH IMPOSES NEW FEES, AMENDS EXISTING FEES AND RETAINS UNCHANGED FEES FOR VARIOUS CITY DEPARTMENTS" which adopts the Municipal Fee Schedule 2014-15 which imposes new fees, rates and charges; amends existing fees; and retains unchanged fees for various City departments, effective July 1, 2014; and **refer** to the City Manager for review the fees for delinquent payment of business certificate fees (30 days after due date), liquor licenses (use permits), use of the Youth Soccer Park, and senior classes.

11. Under Public Presentations, Vincent Lucero addressed the Council with comments requesting recognition of Cesar Chavez Day.

12A. The Council proceeded to consider the approval in concept of the **Santa Clara Convention Center Corporate Partnership Program** and the **upgrade of the outdoor sign** at the corner of Tasman and Great America Parkway. The City Manager introduced the item and Steve Van Dorn, President of the Santa Clara Chamber of Commerce and Convention-Visitors Bureau (SCCC-CVB), addressed the Council with comments regarding the program. He then answered Council questions. The City Manager made general comments. Kevin Moore addressed the Council with comments of concern. **MOTION** was made by Mahan, seconded and carried with Marsalli dissenting (Matthews absent), that, per the Assistant City Manager's memo (04/22/14), the Council **approve** in concept the Santa Clara Convention Center Corporate Partnership Program and **direct** the City Manager to work with the SCCC-CVB to prepare a Request for Proposal (RFP) for a competitive bidding process.

12B. **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works/City Engineer's memo (04/14/14), the Council **approve** appropriations in new project **Santa Clara Various Streets and Roads Preservation Project** (account 533-4443-80300-1371-(G)STP14) and estimated revenue from the Surface Transportation Program (STP) Funds (account 533-4443-55580-1371-(G)STP14) in the amount of $1,891,000; and **approve** the transfer and appropriations of $249,000 from 522-4443-80300-1468 to the Project (533-4443-80300-1371-[G]STP14) (CE 13-14-04).

12C. **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the Director of Planning and Inspection's memo (03/31/14), the Council **approve** and authorize an appropriation and transfer of funds in the amount of $160,000 from the Unallocated City Affordable Housing Fund (account 565-5544-80032-5200) to the City Affordable Housing Fund, City Housing Administration (account 565-5544-80400-5210); and **approve** (retroactively) and authorize the City Manager to execute, an

DRAFT

Agreement for the Performance of Services with **Neighborhood Housing Services Silicon Valley, Inc.**, in an amount not to exceed $160,000, and all related documents for provision of administrative services for the **Below Market Purchase Program**.

13A. **MOTION** was made by Davis, seconded and unanimously carried (Matthews absent), that the Council **approve** the **bills and claims** and **Progress Payments**.

16A. The City Attorney reported that earlier in the evening, the Council met for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit # 4 - City of Santa Clara Professional Engineers; Units # 5, 7 & 8 - City of Santa Clara Employees Association; Unit #6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit # 9 - Miscellaneous Unclassified Management Employees; Unit # 9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; Unit # 10 - PSNSEA (Public Safety Non-Sworn Employees Association and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 097-01-039, APN 097-01-073, APN 104-01-102 and APN 104-03-036; Negotiating Party(ies): William A. Witte, President, Related California; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 104-03-036, APN 104-03-038, APN 104-03-039 and APN 104-03-040; Negotiating Party(ies): Kurt Wittek, Montana Property Group, LLC; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 224-28-035; Negotiating Party(ies): Don Jessup, Silicon Valley Associates; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: APN 224-02-002, 224-02-013, 224-02-014, 224-02-020 and 224-02-023; Negotiating Party(ies): Steve Zamudio, Colliers International;

DRAFT

City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: Coronado Drive, between Stender Way and Central Expressway, Santa Clara, CA; Negotiating Party(ies): Jay DiMaggio, CoreSite; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: 90 N. Winchester Blvd., APN 303-17-047, 303-17-048, and 303-17-049; Negotiating Party(ies): SummerHill Homes; City Negotiator: Julio J. Fuentes, City Manager (or designee); Under Negotiation: Purchase/Sale/Exchange/Lease of Real Property (provisions, price and terms of payment) and there was no reportable action; Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); Prudential Insurance Company of America v. City of Santa Clara (Paramount Parks, Inc., Cedar Fair Southwest, Inc., Real Parties in Interest); Santa Clara County Superior Court Case No. 112CV226740 and that the Council unanimously approved an amendment to a previously approved Settlement Agreement concerning noise testing of the Gold Striker roller coaster at the Great America theme park; City Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al;* Sacramento County Superior Court Case No. 34-2013-80001396 and there was no reportable action; and Council/City Council acting as the Governing Board of the Successor Agency to the City of Santa Clara Redevelopment Agency Conference with Legal Counsel - Anticipated Litigation pursuant to Government Code Section 54956.9(a); Potential initiation of litigation: 1 potential case and that there was no reportable action.

16B. **MOTION** was made by Mahan, seconded and unanimously carried (Matthews absent), that, per the City Attorney's memo (04/17/14), the Council **set May 6, 2014** at 6:00 pm for a Closed Session in the Council Conference Room for a Conference with Labor Negotiators pursuant to Government Code Section 54957.6; City designated representative: Julio J. Fuentes, City Manager (or designee); Employee Organization(s): Unit #1 - Santa Clara Firefighters Association, IAFF, Local 1171; Unit #2 - Santa Clara Police Officer's Association; Unit #3 - IBEW Local 1245 (International Brotherhood of Electrical Workers); Unit #4 - City of Santa Clara

DRAFT

Professional Engineers; Units # 5,7 & 8 - City of Santa Clara Employees Association; Unit # 6 - AFSCME Local 101 (American Federation of State, County and Municipal Employees); Unit # 9 - Miscellaneous Unclassified Management Employees; Unit #9A - Unclassified Police Management Employees; Unit #9B - Unclassified Fire Management Employees; and Unit #10 - PSNSEA (Public Safety Non-Sworn Employees Association); Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(a); *Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al.*, Sacramento County Superior Court Case No. 34-2013-80001396; and a Conference with Legal Counsel - Anticipated Litigation pursuant to Government Code Section 54956.9(a); Potential initiation of litigation: 1 potential case.

17A. **MOTION** was made by Davis, seconded and unanimously carried (Matthews absent), that, there being no further business, the Council adjourn the meeting at 10:12 pm, to Tuesday evening, **May 6, 2014** at 5:00 pm for a Study Session in the City Hall Council Chambers, 6:00 pm for a Closed Session in the Council Conference Room, and at 7:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

DRAFT

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5A

Date: April 29, 2014

To: City Manager for Council Information

From: Director of Parks & Recreation

Subject: Special Order of Business for Recognition of Outgoing Youth Commission Members/May 20, 2014

The Mayor and City Council with introduction of outgoing Commissioners by Recreation Program Supervisor Jennifer Herb, will present four (4) outgoing members of 2013-2014 Santa Clara Youth Commission with a City tile and certificate in recognition of their service to the City at the May 20, 2014 Council meeting.

The Youth Commissioners to receive recognition are:

Name	Years of Service
1. Jeff Hara	2 years
2. Emily Packer	1 years
3. Rafal Saeed	3 years
4. Hannah Villalpando	4 years (Term Limit - Plaque)

James Teixeira

James F. Teixeira
Director of Parks & Recreation

APPROVED:

Julio A. Fuentes

by Julio J. Fuentes
City Manager

Documents Related to this Report: None

I:\Parks\Agendas\Special Order of Business\YC 2014\Youth Commission Presentation of Outgoing Members 2014.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5B

Santa Clara All-America City 2001

Date: April 29, 2014

To: City Manager for Council Action

From: Director of Parks & Recreation

Subject: Special Order of Business for 2014/15 Youth Commission Appointments

EXECUTIVE SUMMARY:

Twelve candidates for the City of Santa Clara Youth Commission were interviewed on April 5, 2014. The interview team evaluated the candidates and rated each candidate on how they would best serve the City on the Youth Commission. Each Commissioner will serve a one-year term beginning in August, 2014 and ending in June, 2015. Each candidate meets the requirements outlined in the City Ordinance No. 1673, which created the Youth Commission. A listing of the fifteen recommended members for the 2014/15 Youth Commission including eleven returning members of the 2013/14 Youth Commission is attached.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the four new members and eleven returning members of the 2013/14 Santa Clara Youth Commission will meet the requirements outlined in the City Ordinance No. 1673, which created the Youth Commission.

ECONOMIC/FISCAL IMPACT:

Staff support and training/meeting expenses are the only fiscal impacts relating to approval of the 2014/15 Youth Commission. Additional economic/fiscal impacts may result as the Youth Commission makes recommendations to the City Council.

RECOMMENDATION:

That the Council: 1) Approve the four candidates on the attached list for appointment to the 2014/15 Santa Clara Youth Commission; and 2) Reappoint eleven returning members of the 2013/14 Santa Clara Youth Commission on the attached list for an appointment of one additional one year term to the 2014/15 Santa Clara Youth Commission.

James Teixeira

James F. Teixeira
Director of Parks and Recreation

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1)Youth Commission List

I:\Parks\Agendas\Special Order of Business\YC 2014\Youth Commission Appointments 14-15.doc

Youth Commission 2014-15

2014/15 Recommended Candidates

Name	Year	School in the Fall of 2014	Term
Sarisha Kurup	10th grade	The Harker School	First
Tamara Pantic	10th grade	Santa Clara High School	First
Alyssa Riley	10th grade	Wilcox High School	First
Tara Singh	12th grade	Mission Middle College	First

2013/14 Returning Youth Commissioners

Name	Year	School in the Fall of 2014	Term
Samia Abbasi	11th grade	Wilcox High School	Third
Ajaipal Chahal	11th grade	Santa Clara High School	Fourth
Karla Cisneros	11th grade	Santa Clara High School	Second
Devleena Das	12th grade	Archbishop Mitty High School	Fourth
Vyvy Nguyen	11th grade	Santa Clara High School	Third
Sheryl Ratnam	12th grade	St. Francis High School	Fourth
Andrew Rauschhuber	11th grade	Wilcox High School	Fourth
Michelle Vo	12th grade	Mission Middle College	Third
Shana Vu	12th grade	Santa Clara High School	Third
Ryan Winter	9th grade	Santa Clara High School	Second
Ashley Wong	12th grade	Wilcox High School	Fourth

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 5C

Santa Clara All-America City 2001

Date: April 29, 2014

To: City Manager for Council Information

From: Director of Parks & Recreation

Subject: Special Order of Business for Presentation of Youth Commission Scholarship/May 20, 2014 Council Meeting

The following presentation is planned for the May 20, 2014 Council Meeting.

Youth Commission Scholarship
Youth Commission Chair Jeff Hara, to make presentation with introductions by Recreation Program Supervisor, Jennifer Herb.

Recipient: Sufyan Abbasi

James Teixeira

James F. Teixeira
Director of Parks & Recreation

APPROVED:

Theila A. Zucker.

for Julio J. Fuentes
City Manager

I:\Parks\Agendas\Special Order of Business\YC 2014\Youth Commission Scholarships 14.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B

Date: May 20, 2014

To: City Manager for Council Action

From: City Attorney

Subject: Consider and Adopt a Negative Declaration Pursuant to CEQA Guidelines Section 15050(b), and Adopt An Ordinance of the City of Santa Clara, California, to Add Article V ("Polystyrene Foam Disposable Service Ware") to Chapter 13.20 ("Storm Drains and Discharges") to Title 13 ("Public Services") of "The Code of the City of Santa Clara, California" to Prohibit the Use of Polystyrene Foam Disposable Food Service Ware

EXECUTIVE SUMMARY:

On September 24, 2013 the City Council adopted Six-Month Strategic Objectives covering the period ending March 15, 2014. The Public Works Department was tasked to initiate the CEQA process for an ordinance to prohibit the use of polystyrene foam disposable food service ware. Staff conducted an extensive public outreach campaign to inform businesses and residents of a potential ordinance that would prohibit food vendors from providing polystyrene foam disposable food service ware. On March 18, 2014, the City Council directed the City Manager to prepare an ordinance after receiving an update on the community outreach efforts and hearing comments from the public.

On August 27, 2013, the City of San Jose conducted a public hearing and adopted a Negative Declaration analyzing the regional impacts of local ordinances in the region to phase-out polystyrene foam disposable food service ware. Pursuant to CEQA Guidelines Section 15050(b), the City of Santa Clara may certify that the information in San Jose's Negative Declaration has been reviewed and considered. Based on this review, and pursuant to CEQA Guidelines Section 15096, the City of Santa Clara can incorporate the findings of the Negative Declaration by reference in the subject ordinance. A copy of the Negative Declaration is contained in the Initial Study for a Polystyrene Foam Disposable Food Service Ware Ordinance prepared by the City of San Jose, which is available in the City Clerk's Office and on the City's website.

The subject Ordinance prohibits national food vendors from selling or providing prepared food in polystyrene foam disposable food service ware on or after September 1, 2014, and will be extended to other food vendors on January 1, 2015. The phased approach will allow smaller food vendors to liquidate their stock of polystyrene foam food ware and identify alternatives that work for their operations. The definition of food vendors includes restaurants, bars, coffee shops, cafeterias caterers, convenience stores, grocery stores, and mobile food trucks. The subject ordinance does not apply to prepackaged foods or meat trays and does not cover non-profit organizations or public agency sponsored programs. However, the Parks & Recreation Department will adopt a policy to prohibit the sale of prepared food in polystyrene disposable food ware during the annual 4th of July celebration and the Art & Wine Festival in September.

Eight (8) jurisdictions in Santa Clara County (including Cupertino, Los Altos, Morgan Hill, Mountain View, Palo Alto, San Jose, Sunnyvale, and Santa Clara County) have already adopted expanded polystyrene foam disposable food service ware ordinances. The ordinances adopted in Los Altos, Mountain View, and

Sunnyvale have prohibited the retail sale of polystyrene products. The retail sale of polystyrene products is not regulated in the subject Ordinance because the community outreach for a proposed polystyrene ban only addressed food vendors, not retailers.

If Ordinance No. 1925 is adopted, Staff will notify all food vendors in the City's business license database of the forthcoming requirements. Initial enforcement will be on a complaint basis and education will be the initial step of enforcement. Code Enforcement Technicians will be instructed to verify that food vendors are not providing polystyrene foam disposable food service ware during mandated industrial/commercial facility stormwater inspections.

Ordinance No. 1925 adds Article V (Polystyrene Foam Disposable Service Ware) to Chapter 13.20 (Storm Drains and Discharges) of Title 13 (Public Services) of "The Code of the City of Santa Clara, California" to prohibit the use of polystyrene foam disposable food service ware. It was passed for the purpose of publication ("passed to print") on May 7, 2014. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 1925 was published on May 14, 2014 and copies were posted in at least three public places.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The adoption of a local polystyrene foam disposable food service ware ban would be a cost-effective trash control measure used to achieve "no visual impact" in low trash generation areas by the year 2022, as mandated by the Regional Water Quality Control Board. However, the additional cost to food vendors to purchase polystyrene foam food service ware alternatives is estimated to be $0.05 to $0.10 per unit.

ECONOMIC/FISCAL IMPACT:

The cost to conduct additional outreach to food vendors to facilitate the implementation of the subject ordinance shall not exceed $5,000. Appropriations are available in the Solid Waste Fund's Operating Supplies account (096-2931-87500).

RECOMMENDATION:

That the Council adopt a Negative Declaration pursuant to CEQA Guidelines Section 15050(b), and adopt Ordinance No. 1925 to add Article V ("Polystyrene Foam Disposable Service Ware") to Chapter 13.20 ("Storm Drains and Discharges") to Title 13 ("Public Services") of "The Code of the City of Santa Clara, California" to prohibit the use of polystyrene foam disposable food service ware.

APPROVED:

Richard E. Nosky, Jr.
City Attorney

for Julio J. Fuentes
City Manager

Documents Attached/ Related to this Report:
1) Ordinance No. 1925

ORDINANCE NO. 1925

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD ARTICLE V ("POLYSTYRENE FOAM DISPOSABLE SERVICE WARE") TO CHAPTER 13.20 ("STORM DRAINS AND DISCHARGES") TO TITLE 13 ("PUBLIC SERVICES") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, polystyrene foam is a distinctive litter concern because it is lightweight, floats and readily travels from land to inland waterways and out to the ocean where it breaks down into small pieces to be mistaken for food by birds and other marine wildlife;

WHEREAS, polystyrene disposable food service ware comprises a majority of expanded polystyrene ("EPS") litter observed in storm drains;

WHEREAS, the proposed phase-out of polystyrene disposable food service ware would require vendors to use alternative disposable food service ware that should result in a reduction in EPS litter, reduce the harm to aquatic wildlife, and improve water quality in Santa Clara creeks and the Southern San Francisco Bay;

WHEREAS, the proposed regional ordinances disallowing the use of polystyrene disposable food service ware constitute "Projects" subject to the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq.;

WHEREAS, the City of San Jose, as lead agency, conducted and prepared a regional environmental review pursuant to CEQA, and included the City of Santa Clara as a responsible agency in that review;

WHEREAS, on August 27, 2013, the City of San Jose conducted a public hearing and adopted the Negative Declaration analyzing the regional environmental impacts of local ordinances in the region to phase-out polystyrene disposable food service ware;

WHEREAS, as a responsible agency in that CEQA review, the City of Santa Clara must make a determination as to the adequacy of the environmental documentation prepared for the Project and make findings for each significant environmental impact effect, if any, pursuant to CEQA Guidelines Section 15096(h); and,

WHEREAS, the Santa Clara City Council now wishes to make its own determination with respect to the Negative Declaration for the phase-out of polystyrene disposable food service ware, and adopt its own ordinance phasing out such polystyrene disposable food service ware.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That pursuant to CEQA Guidelines Section 15050(b), the City of Santa Clara hereby certifies the City Council has reviewed and considered the information in the Negative Declaration for the Project.

SECTION 2: In its limited role as a responsible agency under CEQA, the City of Santa Clara has reviewed and considered the information contained in the Negative Declaration, environmental findings, supporting documentation, and the whole of the record of proceedings. Based on this review, and pursuant to CEQA Guidelines Section 15096, the City of Santa Clara finds that, as to those potential environmental impacts with the City's powers and authorities as responsible agency, the Negative Declaration contains a complete, objective and accurate reporting of those potential impacts, and these findings reflect the independent judgment and analysis of the City Council of

Santa Clara. The environmental findings, as adopted by the City of San Jose, are incorporated herein by reference only and available for review in the City Clerk's Office.

SECTION 3: That a new Article V ("Polystyrene Foam Disposable Service Ware") is added to Chapter 13.20 ("Storm Drains and Discharges") of Title 13 ("Public Services") of "The Code of the City of Santa Clara, California," ("SCCC") to read as follows:

"Article V. Polystyrene Foam Disposable Service Ware

13.20.160 Definitions.

(a) "Disposable food service ware" means single-use disposable products used in the restaurant and food industry for serving prepared food and includes, but is not limited to, plates, trays, cups, bowls and hinged or lidded containers (clamshells). "Disposable food service ware" does not include straws, utensils, drink lids or ice chests.

(b) "Food vendor" means any establishment located in the City of Santa Clara that sells or otherwise provides prepared food for consumption on or off its premises, and includes, but is not limited to, any shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food truck, vehicle or cart, or roadside stand. A "food vendor" does not include a food service provider that is associated with either a nonprofit organization with Section 501(c)(3) status under the Internal Revenue Code or a public agency sponsored program.

(c) "National food vendor" means a food vendor that is a chain of franchised or corporate owned establishments located in more than one state.

(d) "Polystyrene foam" means a thermoplastic petrochemical material made from a styrene monomer and expanded or blown using a gaseous agent (expanded polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). "Polystyrene

foam" is commonly made into disposable food service ware products. "Polystyrene foam" does not include clear or solid polystyrene (oriented polystyrene).

(e) "Prepared food" means food or beverages that are packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the premises. "Prepared food" does not include: (1) any raw, uncooked meat products or fruits or vegetables unless it can be consumed without further preparation; or (2) prepackaged food that is delivered to the food vendor wholly encased, contained or packaged in a container or wrapper, and sold or otherwise provided by the food vendor in the same container or packaging.

13.20.170 Polystyrene foam disposable food service ware prohibited.

(a) No national food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after September 1, 2014.

(b) No food vendor shall sell or otherwise provide prepared food in polystyrene foam disposable food service ware on or after January 1, 2015.

13.20.180 Exemptions to the polystyrene foam disposable food service ware prohibition.

(a) A national food vendor or food vendor may seek an exemption from the prohibition under Section 13.20.170 due to a "unique packaging hardship" under Subsection (b) of this Section or a "financial hardship" under Subsection (c) of this Section.

(b) The national food vendor or food vendor must demonstrate that no reasonably feasible alternative exists to a specific and necessary polystyrene foam disposable food service ware to qualify for a "unique packaging hardship" exemption.

(c) The national food vendor or food vendor must demonstrate both the following to qualify for a "financial hardship" exemption: (1) a gross income under $300,000 on its annual income tax filing for the most recent tax year, and (2) with respect to each specific and necessary

polystyrene foam disposable food service ware, that there is no feasible alternative that would cost the same or less than the polystyrene foam disposable food service ware.

(d) The national food vendor or food vendor may submit a written application for an exemption on a form provided by the Public Works Department. The Director of Public Works or designee may require the applicant to submit additional information or documentation to make a determination regarding the exemption request. A request for exemption shall be with or without condition, for a period of twelve (12) months. The national food vendor or food vendor must apply for a new exemption period no later than sixty (60) days prior to the expiration of the then current exemption period to preserve a continuous exemption status. Each application shall be reviewed anew and will be based on the most current information available. The determination of the Director or designee shall be final and is not subject to appeal."

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Constitutionality, severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 6th day of May, 2014, by the following vote:

AYES:	COUNCILORS:	Davis, Gillmor, Kolstad, Mahan, Marsalli and O'Neill and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

PROOF OF PUBLICATION

Santa Clara Weekly

P.O. Box 580, Santa Clara, California 95052

IN THE
City of Santa Clara,
State of California,
County of Santa Clara

CITY OF SANTA CLARA NOTICE OF PROPOSED ORDINANCE
ORDINANCE NO. 1925
PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

State of California,
County of Santa Clara } SS.

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceeding; and was at and during all said times and still is publisher of the Santa Clara Weekly, a newspaper of general circulation printed and published weekly in the County of Santa Clara, State of California, and said Santa Clara Weekly is and was at all times hereinmentioned a newspaper of general circulation as that term is defined by sections 6000 and following, of the government code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bonafide subscription list of paying subscribers, and is not devoted to the interest or published for the entertainment or instruction of a particular class, profession, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professions, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said County of Santa Clara and State of California at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than non-parell, describing and expessing in general terms the purport and character of the notice intended to be given; that the clipping of which the annexed is a true printed copy, was published and printed in said newspaper on the following dates to wit:

Pub: 5/14/2014

NOTICE OF PROPOSED ORDINANCE NO. 1925
AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD ARTICLE V ("POLYSTYRENE FOAM DISPOSABLE SERVICE WARE") TO CHAPTER 13.20 ("STORM DRAINS AND DISCHARGES") TO TITLE 13 ("PUBLIC SERVICES") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO PROHIBIT THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD SERVICE WARE

This proposed ordinance would prohibit the use of polystyrene foam food disposable service ware by September 1, 2014 for national chains, and by January 1, 2015 for all other food service providers, unless an exemption is sought and approved based upon specific factors.

DATE OF ORDINANCE INTRODUCTION: May 6, 2014
DATE OF PUBLIC HEARING: May 20, 2014 at 7:00 p.m.
LOCATION OF PUBLIC HEARING: City Council Chambers, 1500 Warburton Avenue, Santa Clara
POSTING LOCATIONS: City of Santa Clara locations where the full text of the proposed ordinance is available for review: City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA; Central Park Library, Central Park Library 2635 Homestead Road Santa Clara, CA; Mission Branch Library, 1098 Lexington Street, Santa Clara, CA
Pub.: 5/14/2014

Dated at Santa Clara, California

This 14TH day of MAY, 2014

I declared under penalty of perjury that the foregoing is true and correct.

Signed: _____
(Assoc.) Publisher of the Santa Clara Weekly

The Santa Clara Weekly was adjudicated a newspaper of general circulation in and for the County of Santa Clara on September 3, 1974 (Case No. 314617). The Santa Clara Weekly was adjudicated a newspaper of general circulation within the City of Santa Clara on April 2, 1976 (Case No. 347776).

Meeting Date: 5/20/14

AGENDA REPORT

Agenda Item # MA-1

City of Santa Clara, California

Santa Clara All-America City 2001

Date: May 8, 2014

To: Mayor for Council Action

From: City Manager

Subject: Departmental Activity Report for February 2014

EXECUTIVE SUMMARY:

A copy of the Departmental Activity Report for the month of February 2014 can be viewed on the City's website or is available in the City Clerk's Office for review during business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Departmental Activity Report includes activity reports for all City Departments. There is no disadvantage.

ECONOMIC/FISCAL IMPACT:

There is no additional cost to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council note and file the Departmental Activity Report for the month of February 2014.

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Departmental Activity Report

I/CITYCLERK/DEPARTMENTALACTIVITYREPORT/Agenda Report
02/19/13
Office Records Specialist

Rev. 02/26/08

CITY OF SANTA CLARA

DEPARTMENTAL ACTIVITY REPORT

MONTH OF

FEBRUARY 2014

CITY OF SANTA CLARA

I\CITYCLERK\DEPARMENTAL ACTIVITY REPORT\Cover, List of Departments & Missing Page.doc
01/01/07
Office Records Specialist

DEPARTMENTAL ACTIVITY REPORT
LIST OF DEPARTMENTS

City Manager

City Clerk/City Auditor
- **Performance Measures**
- **Recorded Documents**

Electric Department
- **Monthly Outage Report**

Finance Department (Purchasing)
- **Performance Measures**
- **Municipal Services/License**

Fire Department

Human Resources
- **Employee Activity**
- **Performance Measures**
- **Training/Safety Program Status**
- **Workers Adjustment & Retraining Notification Act**

Library Department
- **Performance Measures**

Parks and Recreation Department
- **Cemetery Division/Mission City Memorial Park**

Planning & Inspection Department
- **Planning Division**
- **Building Inspection Division**
- **Housing & Community Services Division**

Police Department

Public Works Department
- **Automotive Services**
- **Engineering**
- **Building Maintenance**
- **Street**

Water and Sewer Utilities Department
- **Sewer Utility**
- **Water Utility**

Monthly Activity Report
CITY MANAGER'S OFFICE

February 2014			
Performance Measures/Activities	**Current Month**	**Year to Date**	**Budget**
Number of citizen contacts responded to by City Manager's Office	13	300	450
Number of contacts assigned out within 5 business days	13	244	---
% contacts assigned out within 5 business days	100%	81%	90%
Number of EOC training meetings	0	7	5
Number of hours of EOC activation	7	7	---
Assist families in purchasing a home though the First Time Homebuyers Program	0	0	25
Prepare and distribute the Annual Report/Calendar	0	1	1
Prepare and distribute monthly utility bill inserts to utility customers	1	8	12
Prepare City Employee newsletter and distribute to all employees, six times per year	1	4	6
Prepare City newspaper (Inside Santa Clara) and distribute three times per year	0	3	3
Prepare and distribute newsreleases as needed	1	20	---
Number of website updates processed	35	189	---
Number of website page views	189,019	1,893,833	---
Develop and review City publications	1	18	---
Number of weekly cable channel updates processed	20	356	---
Number of press contacts	133	629	---
Number of video newsbriefs produced	2	12	44
Percent of Council meetings taped and broadcast	100%	100%	100%
Respond to legislative inquiries within 4 working days	100%	1%	90%
Number of special events, recognition, and dedications held	0	63	---
Number of business outreach contacts	60	141	---
Provide staff support to Council Committees/ Commissions (number of meetings attended)	6	26	---
Update and administer agreements with organizations and intergovernmental agencies	7	33	10

Performance Measures Reporting
Department: City Clerk's Office
February 2014

Division/Program/Measure	2013-14 Current Month	2013-14 Year to Date	2013-14 Budget	2012-13 Current Month	2012-13 Year to Date	2012-13 Budget
Council/Administration Support						
1. Percent of Council minutes approved within 4 weeks	100%	100%	90%	100%	100%	90%
Number of Council minutes approved	4	25		1	20	
Number of Council minutes approved within 4 weeks	4	25		1	20	
2. Percent of Council minutes approved without amendment	100%	100%	100%	100%	100%	100%
Number of Council minutes approved without amendment	4	25		1	20	
Public Information/Legislative Records Management						
1. Percent of records declared eligible for destruction are destroyed within 30 days	100%	100%	100%	100%	100%	100%
Number of records destruction requests processed	8	29		10	22	
Number of records declared eligible for destruction are destroyed within 30 days	8	29		10	22	
2. Percent of requests for records/information completed within one business day	100%	100%	100%	100%	100%	100%
Number of requests for records/information from citizens (includes telephone inquiries)	1,071	9,722		849	7,700	
Number of requests for records/information from staff	677	5,105		283	3,314	
3. Number of documents processed	71	607	1,820	77	589	1,820
Elections/Political Reform Act						
1. Percent of Campaign Disclosure Reports distributed	100%	100%	100%	100%	100%	100%
2. Number of Campaign Disclosure Reports processed	0	0	30	0	128	30
3. Number of Conflict of Interest forms processed	0	0	200	0	26	200
4. Number of elections held	0	0	0	0	1	1

Performance Measures Reporting
Department: City Clerk's Office
February 2014

Division/Program/Measure	2013-14 Current Month	2013-14 Year to Date	2013-14 Budget	2012-13 Current Month	2012-13 Year to Date	2012-13 Budget
City Auditor						
1. Number of vendor warrants audited	980	8,988	20,000	1,066	8,818	20,000
2. Number of travel reports audited	18	185	750	13	155	750
3. Number of payroll checks processed	2,327	19,948	35,000	2,311	19,851	35,000
Miscellaneous Tasks (not a program)						
UPS deliveries processed	30	203		44	320	
Number of Notary transactions completed	4	105		22	207	
Number of deeds and real property interests accepted and recorded	3	28		5	23	

Rod Diridon, Jr., City Clerk

ELECTRIC DEPARTMENT ACTIVITY REPORT

The following report covers the principal activities of the Electric Department during the month of **February 2014**

DESCRIPTION		CURRENT MONTH	YEAR TO DATE
Poles Replaced		0.0	0.0
Transformers Installed		3.0	3.0
Transformers Replaced		2.0	4.0
Distribution Patrol (circuit maps)	**Total 70 Maps**	0.0	0.0
Distribution Inspection O/H (circuit maps)	**Total 19 Maps**	0.0	0.0
Distribution Inspection U/G (circuit maps)	**Total 19 Maps**	0.0	0.0
Switches Replaced/Installed		1.0	2.0
Underground Cable Installed (ft)		1,300.0	4800.0
Underground Cable Replaced (ft)		2,000.0	4000.0
Metering New Services (Residential/Comm/Indust)		8.0	21.0
Total Meter Removals (Residential/Comm/Indus)		5.0	11.0
Street Lights Installed or Replaced (Knock Down & New Installations)		2.0	3.0
Street Lights Repaired/Replaced		54.0	139.0
Traffic Signal Lamps Replaced		7.0	7.0
Unlocks	Electric	0.0	1.0
Service & Trouble Calls		153.0	301.0
Trees Trimmed	Contractor	815.0	1312.0
Underground Locates		105.0	361.0
Underground Inspections		0.0	77.0
Peak Demands		February 2014 February 2013	236125.70 400.30
Energy Requirements		February 2014 February 2013	406.20 235,701.90

Average Service Availability Index (ASAI)	99.99998
System Average Interruption Frequency Index (SAIFI)	0.00018
Customer Average Interruption Duration Index (CAIDI) (Number of hours per customer)	50.00000

Outages (see attached sheet)

Silicon Valley Power

OUTAGE SUMMARIES

February 2014

Total Customers this Month	51,088	Days of Month
Total Customer Minutes this Month	2,059,868,160	28

Outage Totals

		This Month	This Month Last Year
Unscheduled Outages			
Long	# Outages	1	3
	# Customers Out	9	3254
	# Minutes Out	50	920
	# Customer Minutes Out	450	164562
	# Within City System	1	3
	# Supply to City Minutes	0	4728
Short	# Outages (Blinks)	0	0
	# Customers Affected	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Scheduled Outages			
Long	# Outages	0	0
	# Customers Out	0	0
	# Minutes Out	0	0
	# Customer Minutes Out	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Short	# Outages (Blinks)	0	0
	# Customers Affected	0	0
	# Within City System	0	0
	# Supply to City Minutes	0	0
Totals			
Total Long Outages		1	3
Total Short Outages (Blinks)		0	0
Total Customers Out (Long)		9	3254
Total Customers Affected (Short- Blinks)		0	0
Total Customer Minutes Out		450	164562
Total Outages Within City System		1	3
Total Outages in Supply to City		0	0

Number of Outages (by Cause)

Cause #	Description	Total This Month	This Month Last Year	Rolling AT	% AT
0	Supply to City	0	0	0	0%
1	Overhead Equipment Failure	0	0	21	30%
2	Underground Equipment Failure	0	1	7	10%
3	Weather	0	0	1	1%
4	Birds, Animals, Snakes, etc.	0	0	16	23%
5	Trees	0	0	7	10%
6	Foreign Interference	0	1	3	4%
7	Human	0	1	2	3%
8	Other	0	0	0	0%
9	Unknown	1	0	12	17%
10	Vehicle	0	0	0	0%
	Total	1	3	69	

12 Month Outage Statistics

Index	As of This Month	As of This Month Last Year	Current Month
ASAI (%)	99.9915	99.9941	99.99998
CAIDI (Long) (min)	106.09	65.84	50.00000
SAIDI (Long) (min)	44.84	31.26	0.00881
SAIFI (Long) (ints/tot cust)	0.42	0.47	0.00018
SAIFI (Short) (ints/tot cust)	0.11	0.21	0.00000

ASAI - Average Service Availability Index
(customer minutes available/total customer minutes, as a %)
CAIDI - Customer Average Interruption Duration Index
(average minutes interrupted per interrupted customer)
SAIDI - System Average Interruption Duration Index
(average minutes interrupted per customer for all customers)
SAIFI (Long) - System Average Interruption Frequency Index
(# of long interruptions per customer for all customers)
SAIFI (Short) - System Average Interruption Frequency Index
(# of short interruptions per customer for all customers)

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

3/21/14
Jeff Ipsaro
Division Manager - Operations

Silicon Valley Power

MONTHLY OUTAGE REPORT

February 2014

General Information				Cause		Time & Duration				Customers	
#	Date	S/U	Address/Location	Description	#	Ints	T off	T on	Mins	# Out	Cust Min
1	2/24/2014	U	202-W 2019 Lafayette St	Blown C/O on xfmr T7168	9	1	2/24/14 6:22 PM	2/24/14 7:12 PM	50	9	450

S/U - Scheduled or Unscheduled
Ints - # of Interruptions
Long - >1 min; Short - <1 min
Cause # - see table on page 3

3/21/14
Jeff Ipsaro
Division Manager - Operations

Performance Measures Reporting
Department: Finance
February-14

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Administrative Services/City-Wide Fiscal Planning & Administration						
1. Prepare Operating Budget, Capital Improvement Plan and CAFR documents.	N/A	3	3	N/A	3	3
2. Meet with staff at least quarterly to review work plans.	N/A	2	4	N/A	2	4
Administrative Services/Special Projects						
1. Percent of legislative analysis completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
2. Percent of special requests completed within negotiated time frame.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Cash Management						
1. Average weighted yield on unrestricted funds will be at least 100% of the twelve month average yield on two-year US Government Agency securities.	254%	258%	100%	426%	450%	100%
Budget and Treasury/Contract Management						
1. All actions required in contracts will be met by agreed upon due dates.	100%	100%	100%	100%	100%	100%
2. Ensure that quarterly lease payments for the Great America Theme Park site are made when due.	100%	100%	100%	100%	100%	100%
Budget and Treasury/Debt Management						
1. Submit debt schedules to Council no later than January 31 and July 31 of each year.	N/A	100%	100%	N/A	100%	100%
Budget and Treasury/Financial Analysis						
1. Complete special projects by agreed upon due dates.	100%	100%	100%	100%	100%	100%

Performance Measures Reporting
Department: Finance
February-14

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Budget and Treasury/Budget Development & Analysis						
1. Receive California Society of Municipal Finance Officers (CSMFO) budget awards.	2	2	2	2	2	2
Accounting/General Accounting						
1. Complete the external audit process and preparation of City's Comprehensive Annual Financial Report with an unqualified audit by December 31.	N/A	100%	100%	N/A	100%	100%
2. Receive Government Financial Officers Association of the United States and Canada (GFOA) excellence in financial reporting award.	N/A	1	1	N/A	1	1
3. Complete the preparation and submission of various State, Local, and Federal Agency reports by due dates.	100%	100%	100%	100%	100%	100%
4. Complete the month-end accounting close process and distribution of department budget status reports by the 15th working day of the following month.	100%	75%	83%	100%	75%	100%
Accounting/Payroll						
1. Process bi-weekly payroll and issuance of employee checks by the due date and time.	100%	100%	100%	100%	100%	100%
2. Complete and file the required monthly/quarterly State and federal tax returns before due date.	100%	100%	100%	100%	100%	100%
3. Issue employee W-2 forms by January 31.	N/A	100%	100%	N/A	100%	100%
4. Transmit the electronic version of W-2 to Social Security Administration by March 31.	N/A	N/A	100%	N/A	N/A	100%

Performance Measures Reporting
Department: Finance
February-14

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Accounting/Accounts Payable						
1. Number of invoices processed.	2,757	24,876	40,000	3,154	25,034	30,000
2. Number of vendor warrants issued.	984	8,815	15,000	1,069	9,033	20,000
3. Percent of vendor invoices paid within 7 days of receipt.	98%	95%	95%	97%	95%	95%
4. Number of quick invoice vouchers processed.	884	8,361	15,000	1,175	8,852	25,000
5. Number of Payables process improvements.	1	1	2	0	0	1
Accounting/Receivables/Fixed Assets						
1. Percent of time that invoices are mailed within 10 working days of receipt of documentation from City Departments.	100%	100%	100%	100%	100%	100%
Municipal Services/Utility Billing Services						
1. Percent of closed delinquent accounts collected in-house.	85%	80%	80%	44%	68%	80%
2. Amount of late fees assessed.	$85,045	$528,149	$825,000	$68,069	$536,592	$800,000
Municipal Services/Revenue Receipting-Cashiering						
1. Average monthly number of utility accounts paying by automated methods.	28,629	30,882	29,000	28,127	30,498	26,800
2. Average monthly utility payments processed.	47,902	52,259	50,000	48,555	53,047	50,000
3. Percent of cash drawers reconciled.	100%	100%	100%	100%	100%	100%

Performance Measures Reporting
Department: Finance
February-14

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Municipal Services/Business Certificate						
1. Number of business tax certificates processed annually.	1,188	8,124	12,000	1,074	7,851	12,000
2. Percent of delinquent tax certificates at fiscal year end.	4.35%	4.0%	5.0%	4.6%	4.5%	5.0%
Municipal Services/Field Service						
1. Percent of monthly utility meters accurately read.	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
2. Number of service requests processed yearly.	2,333	23,598	42,000	2,390	24,035	42,000
3. Average number of meters read monthly.	80,083	80,007	80,000	79,846	79,777	80,000
4. Number of months where all 200 routes are read and billed.	1	8	12	1	8	12
Municipal Services/Administration						
1. Percent of Accounts Receivables written off as bad debt annually.	0.003%	0.01%	0.40%	0.20%	0.15%	0.40%
2. Number of major UMIS initiatives successfully implemented during the year.	1	3	5	1	4	5
Municipal Services/Call Center/Communication						
1. Percent of customer calls answered within 90 seconds.	36%	35%	40%	43%	40%	40%
2. Average hold time of sequenced calls (m:s).	4:11	4:13	4:00	3:32	3:40	5:00
3. Number of dropped calls to total calls.	18%	15%	15%	11%	12%	25%
4. Average hold time of sequenced calls before drop (m:s).	5:18	3:32	4:00	3:06	3:36	6:00
5. Average number of customer telephone calls taken monthly.	5,392	5,685	6,000	5,101	5,382	7,000
6. Average number of IVR calls received monthly.	9,838	10,841	12,000	9,611	10,224	12,500
7. Average number of outbound calls made by CSR's.	1,729	1,473	1,500	1,333	1,361	2,100

Performance Measures Reporting
Department: Finance
February-14

Division/Program/Measure	2013-2014			2012-2013		
	Current Month	Year to Date	Budget	Current Month	Year to Date	Budget
Purchasing/Warehouse						
1. Number of material requisitions.	206	2,316	3,200	300	2,170	3,200
2. Number of inventory items cycle counted.	176	1,126	1,200	179	1,129	1,200
Purchasing/Purchasing						
1. Number of purchase orders.	108	858	1,250	133	832	1,250
2. Number of cost reductions/avoidance.	0	0	5	0	0	5
Purchasing/Mail Services						
1. Number of mail pieces processed.	10,484	100,004	147,000	N/A	N/A	N/A

CITY OF SANTA CLARA
DEPARTMENT OF FINANCE - BUSINESS TAX & BUSINESS LICENSE
MONTHLY ACTIVITY REPORT
For the month ending February 28, 2014
With Comparative Amounts for the month ended February 28, 2013

	CURRENT FY 2013-2014		PRIOR FY 2012-2013	
	This Month	Fiscal Year To Date	This Month	Fiscal Year To Date
CASH RECEIVED FROM:				
Business License (Tax Certificate)	$ 86,207	$ 606,265	$ 74,632	$ 556,360
Fire Permits	$ 204,786	$ 1,297,338	$ 133,841	$ 1,108,073
Rubbish Hauler (3%-16%)	$ 9,836	$ 856,328	$ 5,724	$ 818,471
Transient Occupancy Tax (9.5%)	$ 1,128,292	$ 10,392,641	$ 676,468	$ 8,860,661
FISCAL YEAR STATISTICS FOR BUSINESS LICENSES:				
NEW BUSINESS INFORMATION:				
No. of Rental Businesses	28	66	3	34
No. of Santa Clara Businesses	113	951	120	870
No. of Out-of-Town Businesses	55	452	67	424
Total New Businesses	196	1,469	190	1,328
RENEWALS	992	6,655	884	6,522
LICENSES/PERMITS DELETED:	115	1,253	92	1,310
FIELD ENFORCEMENTS/DELINQUENCIES:				
Total No. of Delinquent Accounts	570	* n/a	586	* n/a
Total No. of Accounts in Collection	422	* n/a	348	* n/a
No. Delinquent Accounts Paid	63	400	122	581
No. Delinquent Accounts Deleted	29	583	35	635
Total Delinquents as a % of Total Certificates	4.4%	* n/a	4.6%	* n/a
BREAKDOWN OF CURRENT BUSINESS LICENSES:** (Tax Certificates)				
Number of Hotels/Motels	30		29	
Rental Owners	1,461		1,458	
Fixed Location in City (Inc Home Bus)	8,394		8,241	
Out of City (Includes Contractors)	3,209		3,096	
Total Tax Certificates	13,094		12,824	

Gary Ameling
Director of Finance

cc: City Clerk

* Fiscal Year To Date amounts in these categories are labled not applicable (n/a), as the number listed under "This Month" reflects a revolving count.
** As of report run date on 3/7/14

Rubbish Hauler: The current month is more than the same month from the previous year due to a payment timing difference plus an increase in revenue of 90% in franchise fees paid by Greenwaste Recovery in February 2014 vs. February 2013.

TOT: The current month is more than the same month from the previous year due to a payment timing difference plus an increase in revenue of 17% for hotels paying in February 2013 and February 2014.

TOT - New Hotel: Towne Place Suites by Marriott started account on 2/8/14, but is not officially open until 3/1/14.

Santa Clara Fire Department
Monthly Activity Report
Feb 2014

		This Month	FY 13/14 To Date
Division: Protection			
Program: Administration			
1	Number of hours contributed by the Volunteer/Reserve Division	672	4996
2	Number of Fire responses	15	121
3	Number of emergency Medical responses	355	2979
4	Number of non-emergency Medical responses	147	1105
5	Number of Hazardous Materials responses	0	13
Division: Protection			
Program: Emergency Response			
1	Response time in 90% of all high level emergency medical calls.	5:43	5:49
2	Rseponse time in 90% of all high level emergency fire calls.	5:24	5:05
3	Number of emergency responses	446	3849
4	Number of non-emergency responses	220	1649
5	Percent of total alarms catagorized as false	9.46%	10.4%
Division: Prevention			
Program: Code Enforcement/Public Education			
1	Number of inspections performed by the Fire Prevention Bureau	402	2091
2	Number of inspections performed by the Fire Protection Division	364	2026
3	Number of citizen complaints	0	10
4	Number of community participants in fire and safety training and education programs	0	1930
5	Number of public education meetings	0	19
6	Number of permit inspections	188	1575
7	Number of new business license inspections	44	570
8	Number of plans reviewed	107	867
9	Percent of multi-family (R-1) occupancies inspected	15.50%	33.39%

	This Month	FY 13/14 To Date
Division: Prevention		
Program: Investigations		
1 Number of fires investigated	0	17
2 Number of hazardous materials incidents investigated	0	1
Division: Training		
Program: Training		
1 Number of fire prevention training hours	29.75	434.70
2 Number of hazardous materials training hours	17.42	460.76
3 Number of Emergency Medical Services training hours	96.67	889.67
4 Number of rescue training hours	7.10	705.00
5 All other training hours	558.83	4635.34
Division: Hazardous Materials		
Program: Hazardous Materials Code Enforcement		
1 Number of hazardous materials emergency responses	0	0
2 Number of business inspections	41	243
Division: Incremental EMS Costs		
Program: Paramedic Services		
1 Response time in 90% of all high level emergency medical calls.	5:43	5:49

William Kelly
Fire Chief

Fire Department

Interoffice Memorandum

Date: March 20, 2014

To: Julio Fuentes, City Manager

From: William Kelly, Fire Chief

Subject: February 2014 Monthly OES Report

2/1: Emergency Management briefing regarding the 2014 Super Bowl in New Jersey - 8 hours

2/2: Super Bowl game day response at the 2014 Super Bowl - 14 hours

2/5: Regional response to stadium related event at the County Fire Chiefs Association meeting – 2 hours

2/12: GIS information systems for stadium emergency planning and response - 1.5 hours

2/25: Meeting with City Staff for planning the operations for opening Levi's Stadium in 2014 – 2 hours

2/26: Meeting of the Santa Clara County Operational Area Council – 2 hours

2/28: Crisis communication class with representatives of Silicon Valley Power, City Public Information Officer - 3 hours

City of Santa Clara
Employee Activity Report - February 2014
January 19 2014 - February 15, 2014

	Classified	Unclassified	As-Needed	Total
Budgeted Positions	**880.50	125.00		**1005.50
Filled Positions	750.25	103.00		853.25
Available Positions	130.25	22.00		152.25
Regular Appointments	5.00	1.00		6.00
As-Needed Appointments (includes Additional Classes)			10.00	10.00
Filled As-Needed Positions			416.00	416.00
Separations - Failed Probation				0.00
Separations - Resignation	2.00			2.00
Separations - Dismissal		1.00		1.00
Separations - As-Needed			13.00	13.00
Rehire				0.00
Retirements - Industrial Disability				0.00
Retirements - Service		1.00		1.00
Retirements - Service Pending Industrial Disability				0.00
Promotions		2.00		2.00
Death				0.00
Transfer - 1/2-time to Full-Time	1.00			1.00
Voluntary Demotion	1.00			1.00
Step/Merit Increases Granted	12.00		6.00	18.00
Step Increases Denied				0.00
Unemployment Insurance Claims			2.00	2.00
Long Term Disability Claims				0.00
State Disability Claims	1.00			1.00
Industrial Injury/Illness - Supervisor's Report	5.00			5.00
Industrial Injury/Illness - Medical Only	2.00			2.00
Industrial Injury/Illness - Indemnity (Lost Time)	9.00			9.00

** Total Includes 1 City Manager Temporary Overfill position.

FHunt

Francine Hunt
Human Resources Supervisor

PERFORMANCE MEASURES REPORTING
HUMAN RESOURCES - RECORDS BENEFITS
FEBRUARY 2014

Records and Benefits	2013-2014		2012-2013	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Benefits, Records and Payroll				
1. Percent of employee benefits & compensation transactions processed accurately and timely.	100%	100%	100%	100%
2. Percent separation and retirement payoff calculations completed according to policy and within the final pay period.	100%	100%	100%	100%
3. Percent of new hires processed for pay and benefits in time for their first paycheck	100%	100%	100%	100%

Records and Benefits	2013-2014		2012-2013	
	Year to Date	Budget Goal	Budget Actual	Budget Goal
Workers' Compensation				
1. Percent of Workers' Compensation claims processed within five business days of receipt in Human Resources Department.	100%	100%	100%	100%
2. Percent of work hours lost as a result of industrial injuries and illnesses.	1.15%	2.0%	1.14%	2.0%
3. Percent of workforce that is accident free.	86.6%	85%	84.5%	83%
4. Percent of City-sponsored training classes rated very good or above by attendees.	95%	95%	95%	95%
5 Percent of City employees attending City sponsored training classes.	81.7%	40%	72.9%	40%

Notes:

*** ANNUALIZED TO DATE**

Report Date: 04/25/14
DVMGR: OH

HUMAN RESOURCES DEPARTMENT

TRAINING AND SAFETY ACTIVITIES
Monthly Report

February 2014

TRAINING

1. Topic: Harassment Prevention – Employee (Video)
Date: February 3, 6, 7, 10, 13, 18, 21, 27, 2014
Participants: 17
Duration: 1 hr.

2. Topic: Windows 7 Office 2010 Tips & Tricks
Date: February 3, 2014
Participants: 3
Duration: 1.5 hrs.

3. Topic: Windows 7 Office 2010 Office Orientation
Date: February 5, 14, 20, 24, 2014.
Participants: 37
Duration: 1.5 hrs.

4. Topic: Using Outlook to Manage Your Task List
Date: February 10, 2014
Participants: 7
Duration: 1.5 hrs.

5. Topic: Excel: Drive Your Database
Date: February 11, 2014
Participants: 5
Duration: 3 hrs.

6. Topic: Excel Basics – Part 1
Date: February 11, 2014
Participants: 6
Duration: 3 hrs.

7. Topic: Using the Pending Agenda Item List
Date: February 12, 14, 26, 2014
Participants: 21
Duration: 1 hr.

8. Topic: Outlook Calendar & Scheduling Basics
Date: February 12, 2014
Participants: 4
Duration: 1.5 hrs.

9. Topic: For New Employees – City of Santa Clara Technology Overview
Date: February 18, 2014
Participants: 2
Duration: 1.5 hrs.

10. Topic: Mail Merge (Word, Excel, Outlook)
Date: February 13, 2014
Participants: 1
Duration: 2 hrs.

11. Topic: Excel: Leverage with Links
Date: February 18, 2014
Participants: 3
Duration: 1 hr.

12. Topic: Excel Basics – Part 2
Date: February 18, 2014
Participants: 7
Duration: 3 hrs.

13. Topic: Excel: Summarize & Analyse LARGE Amounts of Data Using Pivot
Date: February 18, 2014
Participants: 3
Duration: 1 hr.

14. Topic: PowerPoint Basics Part 1
Date: February 20, 2014
Participants: 5
Duration: 3 hrs.

15. Topic: MS Publisher Basics
Date: February 25, 2014
Participants: 2
Duration: 3 hrs.

16. Topic: Outlook Contacts
Date: February 25, 2014
Participants: 5
Duration: 1.5 hrs.

17. Topic: Agenda and Agreement Workshop
Date: February 26, 2014
Participants: 8
Duration: 3 hrs.

18. Topic: PowerPoint Basics – Part 2
Date: February 27, 2014
Participants: 3
Duration: 3 hrs.

SAFETY

No significant activities for the month on a City-wide basis.

ADDITIONAL DEPARTMENTAL TRAINING

FIRE

1. Topic: CUPA Conference
Date: February 3 - 6, 2014
Participants: 3
Duration: 32 hrs.

2. Topic: New Radio System Training Make-up
Date: February 3, 10, 2014
Participants: 18
Duration: 1.5 hrs.

3. Topic: Haz Mat Core Training – Day 1
Date: February 7, 8, 17, 2014
Participants: 29
Duration: 6 hrs.

4. Topic: HDL Prime and Fire Portal Training
Date: February 17, 20, 21
Participants: 93
Duration: 3 hrs.

5. Topic: Haz Mat Core Training – Day 2
Date: February 18, 21, 28, 2014
Participants: 32
Duration: 4 hrs.

Attached is the current statistics regarding the Worker Adjustment and Retraining Notification (WARN) Act.

Greg Harris
Human Resources Division Manager/
Training and Safety Officer

cc: Director of Human Resources

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT
2014

COMPANY NAME	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

Notifications Received This Month	0	0	0	0	0	0	0	0	0	0	0	0
Received This Month Last Year	2	0	2	0	0	0	0	0	1	2	1	0
Employees Affected This Month	0	0	0	0	0	0	0	0	0	0	0	0
Affected This Month Last Year	118	0	85	0	0	0	0	0	36	27	2	0

Total Notifications Received This Year:	0
Total Notifications Received Last Year:	8

Employees Affected This Year:	0
Employees Affected Last Year:	268

City of Santa Clara
Library Department Monthly Report
February 2014

Items Borrowed		February-2014	February-2013	Fiscal YTD 2013/14	Fiscal YTD 2012/13
Central Library		183,880	198,202	1,546,437	1,667,278
Mission Branch		1,802	1,965	15,413	16,675
TOTAL		185,682	200,167	1,561,850	1,683,953
Patron Visits					
Central Library*		62,599	109,805	536,370	917,397
Mission Branch		3,440	5,450	29,690	31,696
TOTAL		66,039	115,255	566,060	949,093
**Installed new 3M people counter*					
Patron Electronic Resources Use					
Central Public ER Use		9,700	10,815	83,601	90,731
Reference Inquiries					
Central Library		11,403	14,880	97,071	112,375
Mission Branch		564	439	3,735	3,527
TOTAL		11,967	15,319	100,806	115,902
Program Attendance	*Number*				
Children: Central Library	*21*	2,571	2,643	17,370	17,701
Mission Branch	*2*	40	34	340	236
Adults: Central Library	*19*	581	915	4,466	5,158
Mission Branch	*0*	0	8	129	261
Senior Booktalks	*1*	12	18	93	78
TOTAL	*43*	3,204	3,618	22,398	23,434
Patron Registration					
Santa Clara		566	672	5,404	5,848
SVLS Libraries		315	378	2,899	3,259
Other Libraries		60	34	382	377
TOTAL		941	1,084	8,685	9,484
Collection					
Items Added		2,747	2,429	23,643	19,533
Holds					
Placed		6,067	4,901	50,018	40,012
Filled		4,625	4,022	39,815	32,507
Volunteer Hours					
Genealogy		115.25	161.75	1,227.00	1,117.72
READ Santa Clara		378.50	228.00	3,418.50	2,060.00
Volunteer Program		267.50	307.53	2,114.71	1,889.52
Foundation and Friends		477.00	477.00	3,912.00	4,150.76
Total		1,238.25	1,174.28	10,672.21	9,218.00

Maria Daane 3/31/2014

Maria Daane
Interim City Librarian

Performance Measures Reporting
Department: Library
2013-2014
Month Ending February 2014

Division/Program/Measure	2013-2014 Year to Date	2013-2014 Budget	2012-2013 Year to Date	2012-2013 Budget
Division: Administration				
Program: Administration				
1. Number of hours Library facilities are open to the public annually.	2,650.00	4,000	2,583.00	4,000
2. Number of patron visits to all Library facilities annually.*	566,060	1,400,000	949,093	1,400,000
*Installed new 3M people counter.				
Division: Youth & Extension Services				
Program: Youth Services				
1. Number of programs for children and parents offered.	144	250	147	250
2. Number of reference and reader's advisory questions annually.	26,557	35,000	25,716	35,000
3. Number of participants registered annually in Summer Reading Club.	422	2,800	30	2,800
4. Number of children and adults attending programs.	17,370	30,000	17,586	30,000

Division/Program/Measure	2013-2014 Year to Date	2013-2014 Budget	2012-2013 Year to Date	2012-2013 Budget
Division: Youth & Extension Services				
Program: Young Adult				
1. Number of Young Adult programs offered.	29	20	27	25
2. Number of Young Adult items circulated.	47,585	75,000	50,314	75,000
3. Number of participants annually in the Teen Summer Reading Program.	141	800	18	800
Division: Youth & Extension Services				
Program: Mission Library				
1. Number of items circulated.	15,413	26,000	16,675	26,000
2. Number of programs for children and parents.	10	11	9	11
3. Number of participants registered annually in the Summer Reading Club.	0	200	54	200
4. Number of matched literacy pairs.	69	75	65	75
5. Number of children and adults attending programs.	340	400	236	400

Division/Program/Measure		2013-2014 Year to Date	2013-2014 Budget	2012-2013 Year to Date	2012-2013 Budget
Division: Youth & Extension Services					
Program: Extension Services					
1	Number of homebound patrons served each month.	18	20	18	20
2	Number of programs for adults.	7	11	7	11
3	Number of volunteer hours.	10,710	15,000	8,057	17,000
Division: Adult Services					
Program: Reference					
1.	Number of reference and reader's advisory questions answered annually.	74,406	75,000	86,659	55,000
2.	Number of programs offered to adults.	136	90	148	65
3.	Total attendance at programs offered to adults.	4,466	4,000	5,158	2,500

Division/Program/Measure		2013-2014 Year to Date	2013-2014 Budget	2012-2013 Year to Date	2012-2013 Budget
Division: Adult Services					
Program: Periodicals					
1	Number of periodicals checked in and processed monthly.	701	7,000	751	750
2	Number of requests for Service resolved by Periodicals staff monthly.	755	6,000	777	400
Division: Adult Services					
Program: Local History					
1	Number of programs presented/sponsored annually	18	20	18	20
2	Number of displays developed annually.	7	5	4	5
3	Research inquiries answered annually.	2,334	3,000	2,340	3000
Division: Adult Services					
Program: Circulation					
1	Number of items circulated annually	1,546,437	2,400,000	1,667,278	2,400,000
2	Number of patrons registered annually	8,685	14,000	9,484	14,000
Division: Collection Services					
Program: Technical Services					
1.	Number of items added to the collection each month.	2,747	2,000	2,429	2,000

Division/Program/Measure	2013-2014 Year to Date	2013-2014 Budget	2012-2013 Year to Date	2012-2013 Budget
Division: Collection Services				
Program: Collection Management				
1. Books held per capita.	2.92	3.00	3.00	3.00
2. Total items held per capita.	3.32	3.40	3.40	3.40
3 Library materials expenditure per capita.	$4.15	$ 3.80	$3.80	$ 3.80
Division: Support Services				
Program: Facilities				
1 # of safety inspections made annually	8	12	8	12
2 % of safety issues resolved within 48 hours of report	98%	99%	99%	99%
Division: Support Services				
Program: Technology				
1 Percent of problem reports responded to within 24 hours of receipt.	100%	100%	100%	100%
2 Number of tickets/requests for services resolved by Technology Staff	1186	600	903	600
3 Number of tickets/requests for services resolved by Technology Aides	11,434	10,000	9,827	10,000
4 Number of Library public computer users	83,601	108,000	90,731	108,000
5 Number of Public laptop users	94,078	10,000	21,582	10,000

Month: February Year: 2014
PARKS AND RECREATION DEPARTMENT
MONTHLY ACTIVITY REPORT

1 **Participant Attendance Total** **38,968** with breakdown as follows:

A. By Program

Senior Citizens	15,009	Sports Classes & Leagues	2,994
Pre School	1,308	Teen Activities	1,368
Culture/Performing Arts	5,133	Therapeutics	241
Special Events	3,746	Instructional Swim	0
Camps	36	Recreational Swim	3,788
Total	**38,968**	Youth Activities	5345

B. By Location (consider special events for each location)

Community Recreation Center	8,100	Parks	3,138
Senior Center	15,079	Pools	3,788
Parks Buildings	3,159	School Facilities (add special events)	0
Youth Activities Center	4,051	Teen Center	1,408
Total	**38,968**	Off-Site	245

2 **Non-Directed. Permit or Contract groups attendance total** **85,693** with breakdown as follows:

A. By Activity

	Groups	Attendance
Community Recreation Center Reservation		18
Senior Center		1,390
Teen Center/YAC		1,089
Parks- Buildings Reservation		2,261
Parks- Picnic Reservation		104
Field Reserv., Adult & Youth Groups		42,823
Swim Pool Reservations		38,008
	Total	**85,693**

B. By Location

Senior Center	1,390	T.C./YAC	1,089
Community Recreation Center	18	Fields	42,823
Park Buildings	2,261	Pools	38,008
Parks Picnics	104		
		Total	**85,693**

3 **Monthly Participation totaled** **124,661** (Program attendance & non-directed or permit groups)

4 **Revenue Collected for the Month:**

		Year to Date Fiscal		Fiscal Year
	2/1/2014	**13/14**	**2/1/2013**	**2012/13**
6 Swim Pool Admission	1,554.00	23,917.00	$ 1,419.00	$ 21,882.00
7 Rec. Classes/Swim Lessons	192,039.01	1,570,785.54	$ 87,095.32	$ 1,363,684.99
8 Rentals & Commissions	9,531.00	132,571.22	$ 7,427.00	$ 89,397.50
	$203,124.01	**$1,727,273.76**	**$ 95,941.32**	**$ 1,474,964.49**

February-14
MONTHLY PROJECT ACTIVITY REPORT
PARKS AND RECREATION DEPARTMENT
PARKS DIVISION, CEMETERY DIVISION, SCG&TC OPERATOR

Fund 532 Parks & Recreation:		Activity
3001	Miscellaneous Park Improvements	**H. Schmidt** - Caboose repair complete, awaiting installation at park. **Agnew** - Misc. landscape improvements are underway. **Live Oak** - Parkway strip improvement is nearing completion.
3002	Community Recreation Center	
3003	Tennis & Sport Courts	**Central Tennis Center** - Bid awarded for resurfacing courts, work to commence when weather permits. Lighting upgrade in planning stages for Maywood, CRC, E.Carmichael tennis courts.
3004	Youth Activity Center	Roof replacement bids have been received. Awarding of the bid is underway.
3005	Senior Center	
3006	Teen Center	Projects in the planning stages.
3007	Mission City Cntr for Performing Arts	Maintenance continued by S.C.U.S.D., City pays 33%.
3008	Townsend, Johnson, Washington Sports Field	Continuing field repairs & maintenance. **Washington Field** - Renovations have been completed.
3009	Tree Inventor & Habitat Restoration	
3010	Park Building Roof, Structure Rehabilitation & Replacement	Not funded for 2013-14.
3140	Ulistac Natural Area	**SCVWD** Grant work continue removal of non natives, mulch placement.
3170	Central Park Pond Refurbishment	Bids have been received for the project.
3172	International Swim Center Pool	No projects funded 2013-14.
3176	Miscellaneous Swim Pool Improvements Phase VI	**International Swim Center** - Replacement of defective return valve to racing & training pools. **M.Gomez** - Additional deck light installation on hold waiting for arrival of light poles.
Other		

Fund 562-CDBG Projects:		Activity
5556	Senior Center ADA Improvements	All projects completed, fund depleted (ADA). No additional funding for FY 2013-14
5558	Senior Center Emergency Generator	Project Completed. No additional funding for FY 2013-14.

Fund 840 SOSA		Activity
9532	Golf Course Drainage Restoration	No projects funded for FY 2013-14.

Fund 593 Cemetery		
3625	Burial Improvements	No projects funded for 2013-14.

THE CITY OF SANTA CLARA

ACTIVITY REPORT FOR THE MONTH OF FEBRUARY, 2014

MISSION CITY MEMORIAL PARK

	TOTAL INCOME FROM ALL SOURCES: FEBRUARY, 2014	FEBRUARY, 2013	%	FISCAL YEAR COMPARISON SUMMARY TOTALS TO DATE: 2013-2014	2012-2013	%
FACILITIES						
093/1162/5730						
093/1163/5730	$21,390.00	$24,489.00	-36.3%	$81,474.00	$87,069.00	-6.4%
LABOR						
093/1162/5740						
093/1163/5740	$17,719.00	$21,055.00	-30.2%	$149,354.00	$183,822.00	-18.8%
MATERIALS						
093/1162/5760						
093/1163/5760	$13,042.00	$10,731.00	-0.6%	$72,013.00	$75,985.00	-5.2%
BSR						
TOTALS	$52,151.00	$56,275.00	-27.2%	$302,821.00	$346,876.00	-12.7%
SALES TAX	$5,728.00	$925.56		$6,301.32	$6,430.30	
ENDOWMENT CARE						
077/0131/57500						
077/0131/0361	$5,728.00	$5,991.00	-17.8%	$28,801.00	$29,560.00	-2.6%
TOTAL INCOME	$59,020.20	$63,191.56	-25.9%	$337,923.32	$382,866.30	-11.7%

MONTHLY PURCHASES AND BURIAL SUMMARY

FEBRUARY FISCAL YEAR 2013-2014

INVOICES 32750-32760

NICHES PURCHASED	0
CREMATION PLOTS PURCHASED	0
CREMATION BURIAL RIGHTS	2
FULL BODY PLOTS PURCHASED	4
CREMATION BURIAL (GROUND OR NICHE)	6
FULL BODY BURIALS	4
TOTAL BURIALS FOR THE MONTH OF FEBRUARY	10

FEBRUARY FISCAL YEAR 2012-2013

INVOICES 32606-32617

NICHES PURCHASED	0
CREMATION PLOTS PURCHASED	3
CREMATION BURIAL RIGHTS	2
FULL BODY PLOTS PURCHASED	3
CREMATION BURIAL (GROUND OR NICHE)	6
FULL BODY BURIALS	6
TOTAL BURIALS FOR THE MONTH FEBRUARY 2013	12

3/3/2014

LAWRENCE DEJANVIER

CEMETERY OPERATIONS SUPERINTENDENT

MONTHLY ACTIVITY REPORT
Planning Department
February 1 - 28, 2014

Division/Program/Measure	2013 - 2014 Current Month	2013 - 2014 Fiscal Year To Date	2012 - 2013 This Month Last Year	2012 - 2013 Fiscal Year To Date
Planning Commission Agenda Items				
Variances & Modifications	0	3	0	0
Use Permits (includes Conditional and Special)	1	9	0	16
Zoning & Rezoning	2	13	0	11
Tent. Map, Ten. Parcel Map & Lot Line Adj.	0	4	0	1
ARC Referrals & Review	0	1	0	1
General Plan Amendment	0	4	0	0
CEQA Determination - EIR, Mitigated Neg Dec.	2	8	0	8
Others including Appeals	0	13	0	13
Total	**5**	**55**	**0**	**50**
Historical & Landmark Commission Agenda Items				
Projects reviewed	**2**	**20**	**1**	**4**
Applications Filed				
Variances	1	4	0	2
Permits - Special & Use	0	35	6	43
Zoning - Regular	2	10	4	17
Zoning Administrator Action (Including Modification)	7	83	12	102
Lot Line Adjustment	1	5	1	4
Tentative Map, Tentative Parcel Map, Subdivision Map	1	9	7	17
Historical & Landmarks including Mills Act	0	3	0	4
General Plan Amendments	0	4	0	2
Residential Additions (story) - No Fee	0	1	0	0
Residential Addition (story) - With Fee	0	8	4	12
Residential Regular Projects- No Fee	3	62	8	75
Residential Regular Projects - With Fee	3	14	5	19
Non-Residential - No Fee	0	11	3	38
Non-Residential - With Fee	2	30	3	26
Mixed Use & New Building	0	19	4	10
Landscape - Non Residential	3	24	2	29
Signs	18	147	23	140
Temporary Signs	2	12	0	6
Others including Appeals	8	38	11	36
Total	**51**	**519**	**93**	**582**
Code Enforcement				
New Complaints	**21**	**198**	**19**	**192**
Complaints Resolved	**10**	**135**	**18**	**141**
Fees Collected				
Unadjusted Fees Collected	$ 79,468.00	$ 367,462.50	$ 99,769.00	$ 357,754.00
Add/Deduct: Adjustments & Refunds				
Payments made in prior months not inputted until Feb.	$ 500.00			
Net Fees Collected	**$79,968.00**	**$ 447,430.50**	**$ 99,769.00**	**$457,523.00**

Kevin L. Riley

KEVIN L. RILEY
Director of Planning and Inspection

I:\PLANNING\MonthlyActivity Report\2014\Activity Report - February 2014.xls

City of Santa Clara

Monthly Activity Report

Department of Plannning and Inspection

Building Inspection Division

February, 2014

DESCRIPTION	THIS MONTH	FY YR TO DATE	LAST YEAR
1. PERMITS ISSUED:			
Building	140	1301	126
Electrical	127	1286	132
Plumbing	101	931	90
Mechanical	92	888	76
Total Number of Permits	460	4406	424
2. NUMBER OF INSPECTIONS:			
Building	1035	10562	1020
Electrical	560	5186	474
Plumbing/Mechanical	653	6071	594
Housing	0	0	0
Total Number of Inspections	2248	21819	2088
Total Daily Average	118	136	110
3 SERVICE REQUESTS, COMPLAINTS, CN'S			
Service Requests/Complaints	26	170	21
Correction Notices Issued	23	181	10
Correction Notices Resolved	12	152	12
Correction Notices Unresolved	198	N/A	176
Citations Issued	11	110	16
4. REVENUE GENERATED FEES:			
Building Permits	$ 112,101.50	$ 1,627,157.68	$ 193,135.15
Plan Check	$ 262,523.63	$ 2,571,211.80	$ 161,260.88
Electrical Permits	$ 14,890.70	$ 217,655.46	$ 31,331.81
Plumbing Permits	$ 9,698.79	$ 162,574.35	$ 20,001.16
Mechanical Permits	$ 9,391.40	$ 172,525.56	$ 15,289.05
Miscellaneous	$ 15,980.03	$ 171,161.48	$ 14,562.74
Total Fees	$ 424,586.05	$ 4,922,286.33	$ 435,580.79
Total last year to date		$ 3,720,025.61	

5. NATURE OF BLDG PERMITS ISSUED:

	NO	VALUATION	UNITS	SQFT	PLAN CHECK	PERMIT FEES
Single Family	0					
Multi-Family	0					
Duplex	0					
Apartments	0					
Commercial	0					
Industrial	0					
Public	0					
Alteration & Additions						
Residential	51	$1,384,447.00		2,927	$ 15,730.91	$18,926.23
Commercial/Industrial	25	$10,492,700.00			$ 52,468.30	$58,437.72
Miscellaneous	61	$3,022,030.00			$ 17,562.98	$27,083.73
Public	0					
Total		$14,899,177.00				
Total F/Y to Date		$308,179,586.62				

Sheila Lee, Building Official

3/10/2014

PERFORMANCE MEASURES
BUILDING INSPECTION DIVISION
February, 2014 - FY 2013/14

Permit Services	Adopted	Actual	% Actual/Adopted
1. Percent of express plan checks performed within two working days.	95%	100.0%	105.3%
2. Percent of short cycle plan checks performed with ten business days.	90%	90.0%	100.0%
3. Percent of regular cycle plan checks performed within 30 calendar days.	85%	75.0%	88.2%
4. Percentage of service provided to all Permit Cente customers within 20 minutes of their arrival.	90%	85.4%	94.9%
Inspection			
1. Percent of code complaints responded to within two working days.	90%	42%	46.2%
2. Percent of inspections completed within next working day.	95%	86%	90.3%
Housing Inspection			
1. Percent of multi-family rental housing complexes inspected per month.	1.67%	0.0%	0.0%
2. Percent of housing code complaints responded to within two business days.	90%	n/a	N/A

3/26/2014

CITY OF SANTA CLARA
DEPARTMENT OF PLANNING & INSPECTION

HOUSING & COMMUNITY SERVICES DIVISION
ACTIVITY REPORT FOR FEBRUARY 2014

Program: Federal & State Grant Administration

Mission: Meet the expectations of city residents in delivering needed community services while meeting program administration requirements stipulated by the U.S. Department of Housing and Urban Development.

Measures:	Budgeted	Current Month	FYTD
1. Obtain approval by HUD of the City's annual Consolidated Plan.	100%	0%	100%
2. Obtain approval by HUD of the City's Consolidated Annual Performance and Evaluation Report.	100%	0%	0%

Program: Neighborhood Conservation & Improvement Program

Mission: Improve the local housing stock for the protection of residents and the enhancement of the City.

Measures:	Budgeted	Current Month	FYTD
1. Complete minor and substantial rehabilitation of up to 50 owner-occupied houses.	50	1	20

Program: Housing & Community Development Projects

Mission: Implement in a timely manner budgeted projects and programs that are identified as meeting particular community needs, primarily for low and moderate income people.

Measures:	Budgeted	Current Month	FYTD
1. Monitor the performance of all Public Service Agencies contracting with the City and Agency for compliance to contractual obligations.	10	0	0
2. Annually monitor for compliance all affordable housing contracts.	44	0	30

Approval:

Eloiza Murillo-Garcia
Housing & Community Services
Acting Division Manager

Kevin L. Riley
Director of Planning & Inspection

SANTA CLARA POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

FEBRUARY 2014 (by Calendar Year)	Current Month	Previous Month	This Year to Date	Prev. Year to Date
Homicide	0	0	0	0
Rape	3	1	4	1
Robbery	4	4	8	13
Felony Assaults	1	4	5	20
Burglary	42	64	106	50
Larceny - Thefts	198	203	401	338
(Of above that were from vehicle)	<94>	<111>	<205>	<148>
Auto Theft	48	50	98	63
Local Recovered	140	45	185	63
Recovered for Others	26	36	62	43
Traffic Collisions				
Fatalities	0	0	0	0
Injuries	19	18	37	56
Prop. Damage	65	62	127	121
Total	**84**	**80**	**164**	**177**
Traffic Violations				
Moving	Not available	691	Not available	1,386
Parking	566	699	1,265	1,649
Miscellaneous	0	0	0	0
Total	**Not available**	**1,390**	**Not available**	**3,035**
Arrests				
Adult	380	380	760	685
Juvenile	21	21	42	54
Total	**401**	**401**	**802**	**739**
Warrants				
Received	121	166	287	252
Cleared	105	115	220	226
Reserve Police Hours	894	919	1,813	1,588

FEBRUARY 2014 (by Fiscal Year)	Current Month	Previous Month	This Fiscal Year to Date	Prev. Fiscal Year to Date
Financial Report				
Alarm Permits (4820)	$ 949.50	$ 1,512.50	$ 7,461.50	$ 12,330.00
Vehicle Release Fee (7396)	$ 2,033.00	$ 3,052.50	$ 17,708.50	$ 17,490.90
CA Vehicle Code (7461)	$ 11,957.24	$ 14,764.90	$ 120,355.21	$ 116,420.58
Misdemeanor Fines (7463)	$ 246.66	$ 20,923.56	$ 24,551.03	$ 4,565.44
City Traffic School Fines (7470)	$ 7,006.35	$ 7,707.55	$ 76,768.87	$ 63,695.04
Parking Enforcement (7472)	$ 26,632.61	$ 20,856.31	$ 192,812.15	*$ 236,121.83
DUI Billing (7475)	$ 730.38	$ 2,876.90	$ 11,897.88	$ 7,938.53
Total Monies Received	**$ 49,555.74**	**$ 71,694.22**	**$ 451,555.14**	**$ 458,562.32**

Parking Enforcement total adjusted to remove $115,242.24 from last FY per Capt. Kazem.

Prepared by Caroline Aquino

Automotive Services
Monthly Activity Report
Fiscal Year 2013-14

Report date: 03/28/2014

Equipment Summary	**February 2014**	**Yr to Date FY 13-14**	**Budgeted FY 13-14**
1. Purchased qty of repl units:	**10**	**65**	**109** *
2. Purchased (co) qty of units:	0	2	2 *
3. Purchased qty of upgrades:	0	0	0
4. Emergency Unsched Purchase:	**0**	**2**	**2**
5. % of total units purchased:	9%	61%	
6. Total Dollars Budgeted: (1. - 6. :minus deferrals)*			4,093,500
7. Cost of units purchased:			
$ Budgeted	124,000 *	3,102,240 *	
$ Actual Cost	310,973 *	3,141,497 *	
8. % of dollars allocated:			
% Budget	3%	76%	
% Actual Purchased	8%	77%	

Appropriations (8804) rplcmnts:	100		3,712,500
Excellerated (8804) rplcmnts:	**9 added rplcmnt**		**236,000**
Capital outlay/upgrades:	2 *		145,000
Less equipment deferred:	**0** *		**0** *
Emergency Unsched Purchase:	**2** wrecks etc		**0**
Balance of total purchases:	**113**		**4,093,500**

Maintenance Summary		**February**	**Yr to Date**
1. Qty of PM appointments:		58	779
2. Unscheduled repairs:		202	1169
3. Total Repairs/PM written:		260	1948
4. Avg Qty repairs/PM per day:		14	12
Total work days this month:	19		
Total work days to date:	164		

Sue Cucuzza
Auto Services Coordinator

c:Monthly activity fy2013-14

Submit to City Clerk,
2nd wk of month following activity.

Automotive Services Department
Sustainable "Green Fleet" Commitment
Monthly Activity Report - Fiscal Year 2013-14

Month: February 2014

In October 2005, the City Council approved a goal of 75% of all non-public safety sedans to be ultra-low or zero-emission vehicles by the end of the fiscal year 2007/08. Succesfully Completed fiscal year 2006/07.

In May 2007, the City Council joined Sustainable Silicon Valley and committed among other items to increase the fuel efficiency of our fleet with the goal of not increasing total fleet fuel usage. Council reaffirmed this goal as part of its Principles and Priorities for 2009/10. On track.

The California Air Resources Board (CARB) approved a regulation to reduce toxic diesel particulate matter emissions from diesel fueled public agency and utility fleet vehicles beginning in 2007. Compliant September 30th, 2013.

Sustainable Green Fleet Progress

	Base Year End FY 2006-07			February 2014		
Type Vehicle (Sedans)	Non-Public Safety	Public Safety	Total	Non-Public Safety	Public Safety	Total
All Electric	4	1	5	4	1	5
Hybrids (gas/elec)	47	17	64	47	20	67
Alternate Fuel (capable)	0	0	0	0	39	39
Subtotal	86%	16%	41%	91%	56%	68%
qty	51	18	69	51	60	111
Other (gas only)	14%	84%	59%	9%	44%	32%
qty	8	93	101	5	47	52
Total	100%	100%	100%	100%	100%	100%
qty	59	111	170	56	107	163

Comment: Future City purchased police patrol cars off State contract, will be alternate fuel capable vehicles.

Fleet Fuel Usage Unleaded only	Base Year FY 2006/07	Last Year Monthly Usage	Current Monthly Usage	Current Total Usage YTD	Current Total FY (% Base Year)
Annual Gallons	219029	15642	14467	135127	62%

CARB Diesel Emission Retrofit/Replacement

Number of Diesel Vehicles (that require retrofit) By calendar year	Summary of Retrofits	Units sold in Calif.	Retrofits Completed	Total Fleet Retrofits/Sold Completed to date (by Cal Year)
cal year 2007 : 13 20% of applicable Fleet (63)	Compliant	3	13	13 Retros / 3 sold in calif
cal year 2008 : --	Compliant	1	0	1 sold in Calif
cal year 2009 : 26 60% of applicable Fleet (63)	Compliant	1	29	29 Retros / 1 sold in Calif
cal year 2010 : --	Compliant	1	0	1 sold in Calif
cal year 2011 : bal of Fleet: 15 100% of applicable Fleet (63)	Compliant	1	14	14 Retros / 1 sold in Calif balance zero to upgrade
cal year 2012 : bal of Fleet: 5 of New applicable count of (68)	Qty:5 2007's to be installed 2013, units found in fleet in late 2012.	0	0	Temp test done, parts on order. To be completed by Dec 2013
cal year 2013 : bal of Fleet: 5 of New applicable count of (68)	Qty:5 2007's with 1: 2004 and 4: 2006 engines. Units found in fleet in 2012.	0	5	100% COMPLIANT with 61 retros, 7 sells

Prepared by Sue Cucuzza
Automotive Services Coordinator

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Support Services
Program: Division Administration
Number: 001/4411

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percentage of Agenda Reports completed on time.	89%	94%	95%
2. Percentage of Agenda Reports completed satisfactorily.	67%	83%	95%
3. Percent of City Manager assignment requests responded within time requested.	-	90%	95%
4. Percentage of customers surveyed that are very satisfied.	-	#DIV/0!	95%

Division: Support Services
Program: Development Support
Number: 001/4412

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Support Services
Program: Capital Improvement Projects
Number: 001/4413

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Building Maintenance
Program: Maintenance / Repair
Number: 001/2222

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percent of all requests for service responded to within four business days.	-	100%	100%

Division: Building Maintenance
Program: Janitorial
Number: 001/2223

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Respond to all service requests within two hours.	-	100%	100%
2. Clean all restrooms in all major buildings daily.	-	100%	100%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Design
Program: Division Administration
Number: 001/4441

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Development Support
Number: 001/4442

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Design
Program: Capital Improvement Projects
Number: 001/4443

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percent of Capital Improvement Projects designed within budget.	-	100%	80%
2. Percent of Capital Improvement Projects designed within approved schedule.	-	100%	80%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Field Services
Program: Division Administration — **Number:** 001/4461

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percentage of complaints responded to within one business day.	67%	88%	90%
2. Number of construction activity complaints.	3	8	25

Division: Field Services
Program: Development Support — **Number:** 001/4462

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percent of inspection requests responded to within one business day.	100%	100%	90%

Division: Field Services
Program: Capital Improvement Projects Inspection — **Number:** 001/4463

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percent of Capital Improvement Projects that reached substantial completion within the construction contract time.	-	#DIV/0!	75%
2. Percentage of Capital Improvement Projects completed within approved budget.	-	#DIV/0!	100%
3. Percentage of customers rating services as satisfactory.	-	#DIV/0!	100%
4. Percentage of Capital Improvement Projects completed with Change Orders under 5% of construction cost.	-	#DIV/0!	90%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Land & Property Development
Program: Division Administration
Number: 001/4451

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. This Program has no reportable performance measures.	N/A	N/A	N/A

Division: Land & Property Development
Program: Development Support & Review
Number: 001/4452

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Percent of subdivision maps first submittals reviewed within 15 business days.	-	40%	95%
2. Percent of subdivision maps subsequent submittals reviewed within 10 business days.	100%	50%	95%
3. Percent of Title documents drafted within 10 business days.	100%	92%	95%
4. Percent of private development plans reviewed on first review within 20 business days.	50%	61%	95%
5. Percent of private development plans reviewed on subsequent reviews within 15 business days.	67%	74%	95%

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Traffic
Program: Division Administration — **Number: 001/4431**

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Number of grants applied for or being processed.	1	1	12
2. Number of special transportation permits issued.	63	310	350
3. Number of citizen/customer requested studies completed.	12	104	30

Division: Traffic
Program: Development Support — **Number: 001/4432**

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Number of preliminary site and development plans for Project Clearance and Subdivision Committee reviewed.	7	79	200
2. Number of encroachment permits, Capital Improvement Projects, and traffic control plans reviewed within agreed time frame.	25	112	145

Division: Traffic
Program: Capital Improvement Projects — **Number: 001/4433**

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Number of traffic projects under design.	0	2	12
2. Number of projects under construction requiring Traffic division support.	0	0	12

Division: Traffic
Program: Traffic Signal Management — **Number: 001/4434**

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Number of timing, coordination, detection, equipment, or other signal management requeests responded to.	14	154	150

PERFORMANCE MEASURES REPORTING
ENGINEERING, BUILDING MAINTENANCE, & TRAFFIC
FEBRUARY 2013

Division: Traffic
Program: Traffic Striping and Signing
Number: 001/4435

Performance Measures	FEBRUARY Actuals	YTD Actuals	2013-2014 Budget
1. Number of work orders created for Street Department action.	6	39	150

STREET AND AUTOMOTIVE SERVICES DEPARTMENT
MONTHLY ACTIVITY REPORT - February 2014

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
A. STREET MAINTENANCE					
1.	Deeplift AC R&R (In-House)	(ton)	0	1,964	833
2.	AC Restorations (Permits) (In-House)	(ton)	37	330	445
3.	Miscellaneous AC Repair (In-House)	(ton)	59	168	59
3.1.	Total AC Placed (In-House)	(ton)	96	2,455	1,337
4.	Crack Sealing (In-House)	(lf)	0	41,160	39,375
5.	Area of Streets Prepared for Slurry (In-House)*	(sy)	0	0	0
6.	Area of Streets Prepared for Fog Seal (In-House)*	(sy)	0	0	0
7.	Deeplift AC R&R (Contract)	(ton)	0	291	0
8.	AC Restorations (Permits) (Contract)	(ton)	0	0	0
9.	AC Overlay (Contract)	(ton)	0	0	0
10.	Slurry/Cape Seal (Contract)*	(sy)	0	0	0
11.	Miscellaneous AC Repair (Contract)	(ton)	0	0	0
11.1.	Total AC Placed (Contract)	(ton)	0	0	0
12.	Miscellaneous Activities	(hr)	850	7,452	9,778
SIDEWALK MAINTENANCE					
13.	Sidewalk R&R (In-House)	(sf)	0	0	2,248
14.	Curb & Gutter R&R (In-House)	(lf)	0	0	155
15.	Sidewalk Grinding	(hr)	12	113	269
16.	Sidewalk R&R (Contract)	(sf)	0	10,314	3,744
17.	Curb & Gutter R&R (Contract)	(lf)	0	897	784
18.	Valley Gutter (Contract)	(sf)	0	0	0
19.	Wheelchair Ramp (Contract)	(ea)	0	0	0
20.	Median Curbs (Contract)	(lf)	0	0	0
21.	Miscellaneous Activities	(hr)	0	0	0
22.	Illegally Dumped Materials	(gal)	5,810	24,750	6,195
B. STORM DRAIN SYSTEM MAINTENANCE					
1.	Catch Basins Cleaned	(ea)	255	2,342	2,950
2.	Main & Lateral Flushing	(ft)	1,030	10,394	10,228
2.1.	Main & Lateral Flushing	(cy)	3	64	17
3.	Illicit/Illegal Discharge Incidents	(ea)	6	66	19
4.	Illicit/Illegal Discharge Incidents	(hr)	28	252	80
5.	Other Non-Point Source Activities	(hr)	34	99	5
6.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(hr)	103	618	995
6.1.	Pump Stn. Mtce./Wet Well/Trash Rack Cleaning	(cy)	16	83	83
7.	Pump Station/Outfall Monitoring	(hr)	122	1,097	777
8.	Creek Clean-Up/Trash Abatement	(hr)	0	34	59
9.	Construction Site Inpections	(ea)	15	84	62
10.	Construction Site Inspections	(hr)	21	128	137
11.	Ind/Com Facility Inspections	(ea)	114	690	115
12.	Ind/Com Facility Inspections	(hr)	71	485	130
13.	Public Information Participation	(hr)	0	19	33
14.	Miscellaneous Activities	(hr)	318	1,793	2,004
C. TRAFFIC STRIPING & SIGNAGE MAINTENANCE					
1.	Striping Installed	(mi)	0.0	65.3	77.5
2.	Curbs Painted	(lf)	2,828	18,897	17,701
3.	Vandalism	(hr)	15	59	54
4.	Services for Other Departments	(hr)	117	610	388
5.	Pavement Marking (messages & crosswalks)	(sf)	34	6,346	6,294
6.	Sign Fabrication	(ea)	93	702	615
7.	Sign Maintenance	(hr)	172	988	1,231
8.	Signs Installed, Upgraded or Repaired	(ea)	275	1,271	1,524
9.	Metal Beam Guardrails	(lf)	0	297	833
10.	Miscellaneous Activities	(hr)	192	1,584	1,902
11.	Striping Installed (Contract)	(mi)	0.0	0.0	0.0
12.	Pavement Marking (Contract)	(sf)	0	0	0
13.	Pavement Markers (Contract)	(ea)	0	0	0

STREET AND AUTOMOTIVE SERVICES DEPARTMENT
MONTHLY ACTIVITY REPORT - February 2014

			THIS MONTH	THIS FY TO DATE	LAST FY TO DATE
14.	Inertial Barriers	(ea)	0	0	0
D. SPECIAL DEPARTMENTAL ACTIVITIES					
1.	Clean-Up Campaign - Hours	(hr)	0	0	0
2.	Clean-Up Campaign - Debris Collected	(cy)	0	0	0
3.	Crack Sealing (Contract)	(lf)	0	0	0
4.	Fog Sealing (Contract)	(sy)	0	0	0
5.	Leaf Vac Program - Debris Collected	(cy)	0	2,699	1,892
6.	Christmas Tree Collection Program	(hr)	0	67	517
E. PARKWAYS & BOULEVARDS MAINTENANCE					
1.	Trees Planted	(ea)	0	101	80
2.	Trees Sprayed/Trees Injected	(ea)	0	3	1
3.	Root Pruning	(ea)	5	19	14
4.	Bracing & Cabling	(ea)	5	38	22
4.1.	Immediate Calls for H/B and B/D	(ea)	9	137	146
5.	Trees & Stumps Removed	(ea)	2	104	82
6.	Citizen Generated Tree Trim Requests	(ea)	23	568	636
6.1.	Miscellaneous Generated Service Requests	(ea)	38	376	403
7.	Trees Trimmed - City Crews	(ea)	40	473	496
7.1.	Trees Trimmed - Contract	(ea)	49	598	572
7.2.	Total Trees Trimmed	(ea)	89	1,071	1,068
8.	Backlog of Citizen Trim Requests - In-House				
8.1.	Current Month	(ea)	16		534
8.2.	More than 30 days	(ea)	25		448
8.3.	More than 60 days	(ea)	268		1,105
8.4.	Total Backlog	(ea)	309		2,087
9.	Backlog of Citizen Trim Requests - Contracted				
9.1.	Current Month	(ea)	10		153
9.2.	More than 30 days	(ea)	4		150
9.3.	More than 60 days	(ea)	19		444
9.4.	Total Backlog	(ea)	33		749
10.	Miscellaneous Trash Pickup	(gal)	400	2870	1,498
10.1	VTA Trash Pickup	(gal)	350	2800	1,730
F. SOLID WASTE					
1.	Clean Green Collection				
1.1.	Cubic Yards	(cy)	3,160	33,887	34,573
1.2.	Tons	(ton)	632	6,778	6,915
2.	Complaints Responded To:				
2.1.	Clean Green	(ea)	1	3	0
2.2.	Garbage	(ea)	1	5	4
3.	Street Sweeping				
3.1.	Miles Cleaned	(mi)	2,812	19,670	19,359
3.2.	Man-Hrs per Curb-Mile	(hr/mi)	0.10	0.95	0.91
4.	Illegal Sign/Graffitti Abatement				
4.1.	Illegal Signs Removed	(ea)	284	3,188	2,584
4.2.	Graffiti Loc. (Pri/Pub/Gar Bins) Reported	(ea)	1,323	8,220	1,177
4.3.	Graffiti Notices Issued	(ea)	2	41	92
4.4.	Private Property Graffiti City Clean Up	(ea)	6	1,593	940
5.	No. of Violations				
5.1.	For Containers Stored on Street	(ea)	4	84	N/A
5.2.	For Containers with Lids Open	(ea)	0	3	N/A
5.3.	For Overfilled Containers	(ea)	0	4	N/A
5.4.	For Accumulation of Refuse	(ea)	0	8	N/A

* Partial street area not included.

Prepared by: Dawn Garone

Approved by:

CITY OF SANTA CLARA SEWER DEPARTMENT
MONTHLY ACTIVITY REPORT FEBRUARY 2014

ACTIVITY	WORK UNIT	THIS MONTH	FISCAL YEAR
TOTAL Service Requests	Number	131	1,469
Cleanout Installations	Number	0	15
Lateral Stoppages	Number	107	1,019
Main Stoppages	Number	2	25
Misc. Requests/Complaints	Number	20	382
Roach Customer Complaints	Number	1	7
Lateral/Main Repairs	Number	1	4
Sewer Construction	Feet	0	0
Jet Cleanings	Feet	0	113,691
Roach Control (Manholes)	Number	0	2
Lateral Installations	Number	0	16
TV Inspections, Laterals	Each	9	35
TV Inspections, Main Lines	Feet	0	11
Root Foaming, Main Line	Feet	0	0
Root Foaming, Lateral	Number	0	0
Pump Calls, Storm & Sewer	Number	4	38

SEWAGE PUMP STATIONS DATA	NORTHSIDE	RABELLO
Total pumped (MG) during February	72.1	160.5
Total pumped (MG) since July 1, 2013	729	1441
Average daily flow for the month (MGD)	2.6	5.7

SAN JOSE OUTFALL		MONTH	F.Y.
28 days			
Flow Total (MG)	Line A (West)	41.65	373
	Line B (East)	98.54	885
Combined flow Lines A & B (MG)		140	1258
Average Daily Flow (MGD)	Line A	1.5	
	Line B	3.5	
Total average flow		13.3 mgd	

Christopher L. de Groot
Director Water & Sewer Utilities

Nina Hawk for CdG

Division/Program/Measure		2013-2014			2012-2013		
		Feb-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Sewer System Administration	**094/1511**						
1. Prepare annual Sewer Revenue Program (as required for Federal program and WPCP cost distribution) by due dates each year.		0	2	2	0	0	2
2. Prepare monthly status reports and TPAC agenda reports.		1	8	12	1	8	12
Sewer System Maintenance	**094/1512**						
1. Number of feet of mainline jetted.		0	113,693	350,000	10,650	202,431	350,000
2. Percentage of sanitary sewer overflows reported to the State CIQWS database within the time frame required by regulations		100%	100%	100%	1	100%	100%
3 Number of reportable sewer spills		1	5	<3	1	4	<3
Sewer Operations	**094/1514**						
1. Number of pump and metering stations inspected.		5	182	396	33	264	396
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.		100%	100%	100%	100%	100%	100%
San Jose/Santa Clara WPCP	**094/1515**						
1. Support Treatment Plant Advisory Committee (TPAC) members to represent the City in matters relating to the WPCP at monthly meetings.		1	8	12	1	8	12
2. Provide sufficient funding for all WPCP approved projects.		25%	75%	100%	25%	75%	100%
Sewer/Storm Pump Maintenance	**094/1516**						
1. Number of storm pump stations inspected.		34	241	408	34	272	408
2. Provide all preventative and routine maintenance as specified in operations and maintenance manuals.		100%	100%	100%	100%	100%	100%
3 Coordinate annual load test for generators.		0	2	10	0	3	10

Christopher L. de Groot
Director of Water & Sewer Utilities

Nina Hawk for CdG

I:\Water\MEMOS\MonthlyReports\Performance Measures\Performance Measures 2013-14.xls\Sheet1

CITY OF SANTA CLARA WATER DEPARTMENT MONTHLY REPORT

February - 2014

Installed Water System Components:

Mains				
SIZE (in)	MT'L	BY	TYP	FT
8	DIP	WD	DW	553
			TOTAL	553

Services			
SIZE (in)	BY	TYP	QTY
1	CT	DW	8
		TOTAL	8

Meters			
SIZE (in)	BY	TYP	QTY
1	CT	DW	8
		TOTAL	8

Backflows			
SIZE (in)	BY	TYP	QTY
		TOTAL	0

Fire Services			
SIZE (in)	BY	TYP	QTY
4	CT	RP	1
		TOTAL	1

WD = Water Dept - CT=Contractor - DW= Drinking Water (Potable) - RW = Recycled Water

TASK	QTY
WATER WASTE WARNINGS ISSUED	0
LOW FLOW SHOWER HEAD/CONSERVATION KITS DISTRIBUTED	28
COMPLAINTS & SERVICE REQUESTS RESOLVED	85
SOLAR POOL SYSTEM COMPLAINTS & SERVICES	2
SOLAR DOMESTIC HOT WATER COMPLAINTS & SERVICES	0
WATER QUALITY SAMPLES TAKEN	375
PLANS CHECKED	39
FIRE HYDRANTS REPAIRED	4
DAMAGED FIRE HYDRANTS REPAIRED	0
FIRE HYDRANTS PAINTED	10
FIRE HYDRANTS FLUSHED	67
MAIN BREAKS REPAIRED	3
MAINLINE VALVES TESTED AND EXERCISED	185
BROKEN VALVES REPLACED	0
AIR RELIEF VALVES TESTED AND REPAIRED	2
WELL SITE FACILITIES PAINTED	0
REGULATOR (ZONE) VALVES CHECKED/ADJUSTED	0
SOLAR POOL HEATERS INSTALLED	0
SOLAR DOMESTIC HOT WATER SYSTEMS INSTALLED	0

TASK	QTY
METERS CHANGED FOR REPAIR & TESTING, ROUTINE - POT & RCW	57
METERS TESTED IN SHOP - POT & RCW	0
METERS REPAIRED - POT & RCW	0
LARGE METERS TESTED & REPAIRED IN FIELD	0
LARGE WATER METERS/SERVICES PAINTED - > 2"	0
FIRE DETECTOR CHECK VALVES REPAIRED	0
FIRE DETECTOR CHECK VALVES READ	6
FIRE DETECTOR CHECK VALVES TESTED	0
BACKFLOW PREVENTERS TESTED	243
BACKFLOW PREVENTERS REPAIRED	9
SERVICE TAGS PROCESSED (SO1)	110
FIRE HYDRANTS INSTALLED	
USA WATER LOCATES PERFORMED	254
Unused	
Unused	
Unused	
Unused	
Unused	
Unused	

WORK IN PROGRESS:

INSTALLATION OF SOLAR SYSTEMS AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE SERVICES AT VARIOUS LOCATIONS.
INSTALLATION OF RP DEVICES AT VARIOUS LOCATIONS.
INSTALLATION OF FIRE HYDRANTS AT VARIOUS LOCATIONS.
Saw cut Winchester for main replacement
Wincherster main replacement
Saw Cut 960' for main replacement for Pilotnob

WORK COMPLETED:

Finished All Of Winchester Main Replacement Project

WATER SUPPLY DATA		QTY
Ground Water Pumped - MG	MG	256.1
Scvwd Treated Water Purchased - MG	MG	85.5
Hetch-Hetchy Water Purchased - MG	MG	57.5
Total Drinking Water Production This Month - MG	MG	399.1
Avg. Daily Drinking Water Production This Month - MGD	MGD	14.25

MISCELLANEOUS:

MAINTENANCE OF MAINS, HYDRANTS,SERVICES, WELLS, TANKS AND SOLAR SYSTEMS.

Christopher L. de Groot
Director of Water & Sewer Utilities

Nina Hawk for CdG

I:\Water\Memos\MonthlyReports\Water\FORM.xls

Division/Program/Measure		2013-2014			2012-2013		
		Feb-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water Engineering/Design Engineering	**092/1411**						
1. Number of plans reviewed.		39	256	220	20	196	220
2. Complete review of plans by the required due dates.		85%	82%	90%	80%	96%	90%
Water Engineering/ Water Quality	**092/1412**						
1. Create and publish the annual Consumer Confidence Report in accordance with the California Safe Drinking Water Act requirement.		0	0	1	0	0	1
2. Number of water quality samples processed.		375	2,583	3,000	428	2,612	3,000
Water Engineering/Water Resources	**092/1413**						
1. Promote water conservation at public events.		1	2	4	0	1	5
Water System Maintenance	**092/1422**						
1. Maintain an industrial standard for unaccounted water of 5% or less.		<5%	< 5%	< 5%	< 5%	< 5%	< 5%
2. Number of responses to customer service requests.		85	998	1,600	95	866	1,600
3. Respond to customer service requests within 30 minutes of receipt of calls (excluding scheduled appointments and after hours call back requests).		95%	91%	80%	93%	90%	80%
4. Number of backflow prevention devices tested.		243	1,907	2,000	216	1,729	2,000
5. Number of meters changed for routine, repair and testing.		57	763	800	74	446	800
6. Number of main break repairs/broken valve replacements performed.		3	72	95	4	52	95

Division/Program/Measure		2013-2014			2012-2013		
		Feb-14	Year To Date	Budget	This Month Last Year	Year To Date	Budget
Water System Construction	**092/1423**						
1. Number of lineal feet of water mains installed.		553	4,298	7,500	36	2,002	5,000
2. Number of new service installations.		3	75	50	15	77	50
3. Number of underground utility locates performed.		250	2,350	2,000	273	2,199	2,000
Water System Operations	**092/1424**						
1. Perform routine maintenance on City fire hydrants.		81	439	750	0	627	750
2. Number of production meters read and recorded.		64	512	800	64	512	800
3. Number of mainline water valves tested and exercised.		185	1,161	800	27	829	800
Solar System Maintenance	**092/1532**						
1. Number of responses to customer service requests.		2	113	300	14	155	300
2. Number of systems provided with semi-annual winterization service. twice each year.		0	63	110	0	51	50
3. Number of removal and reinstallation requests.		2	18	12	6	43	12
4. Percent of service requests responded to within one business day.		95%	92%	75%	100%	92%	75%
Recycled Water System Maintenance, City	**097/1522**						
1. Number of recycled water meters greater than 2" tested annually.		0	0	18	0	0	18
South Bay Water Recycling System Maintenance	**097/1525**						
1. Provide all O & M services as required in Agreement for Services.		100%	100%	100%	100%	100%	100%

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-2

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval for Use of City Forces, Electric Department Estimates

EXECUTIVE SUMMARY:

It is requested that the City Council find that City Forces, supplemented by Public Works and Contract Labor, if necessary, can best perform the installation of the following electric facilities and approve the use of City Forces, therefore:

Estimate No:	33492
Title/Location	Temporary Power for Santa Clara Square, 2727 Augustine Drive
Type of Job:	Temporary Power
Description of Work:	Install new transformer with 50' of 12kV cable for a temporary power service

Estimated Cost:	$23,224.91	Customer/Developer Contribution:	$	9,194.99
		Salvaged Plant	$	14,029.92
		Customer Service Charge	$	.00

RECOMMENDATION:

That Council approve the use of City Electric forces for the installation of facilities at 2727 Augustine Drive.

John C. Roukema
Director of Electric Utility

APPROVED

Julio J. Fuentes
City Manager

Documents related to this report: None

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-3

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Finance/Assistant City Manager

Subject: Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2013-14 Third Quarter as Submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau

EXECUTIVE SUMMARY:

Submitted for City Council review and acceptance in a combined format is the SCCC-CVB Activity Report for Fiscal Year 2013-14 Third Quarter as submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau. Submission of the report is required under the management agreement for the operation of the Santa Clara Convention Center and the agreement for convention and visitor services.

As mentioned in the attached report, the Third Quarter Financial Results (Results) of the Santa Clara Convention Center (SCCC) show year-to-date revenues at $979,227 greater than budget. Revenues were favorable in the audio-visual, telecommunications, and space rental categories, but below budget in the event revenue category. The Results also show year-to-date expenses at $313,803 more than the budget. Of the $313,803 variance, $124,933 was attributable to labor related expenses and $188,870 was attributable to operating expenses. The above revenue and expense variances combined for a year-to-date SCCC favorable budget variance of $665,424 as of March 31, 2014.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The SCCC-CVB Activity Report for Fiscal Year 2013-14 Third Quarter provides current information on the business activities of the Santa Clara Convention Center and Convention-Visitor's Bureau.

ECONOMIC/FISCAL IMPACT:

Acceptance of this report will have no fiscal impact to the City other than administrative staff time and expense.

RECOMMENDATION:

That the Council accept the Santa Clara Convention Center and Convention-Visitor's Bureau Activity Report for Fiscal Year 2013-14 Third Quarter as submitted by the Santa Clara Chamber of Commerce and Convention-Visitor's Bureau.

APPROVED:

Gary Ameling
Director of Finance/Assistant City Manager

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) SCCC-CVB Activity Report for Fiscal Year 2013-14 Third Quarter

I:\Budget & Treasury\Acctnt Analyst\ConventionCenter\Santa Clara Convention Center Quarterly Activity report\FY 13-14\SCCC_CVB_AgendaRpt_3rdQfy1314\SCCC_CVB_AgendaRpt_3rdQfy1314.doc

SANTA CLARA
SILICON VALLEY CENTRAL®
CHAMBER OF COMMERCE & CONVENTION – VISITORS BUREAU

April 30, 2014

The Honorable Mayor and City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mayor and Council:

The following is the Santa Clara Convention Center and Convention-Visitor's Bureau Activity Report for Fiscal Year 2013-14, Third Quarter, year-to-date encompassing the months of January, February and March.

SANTA CLARA CONVENTION CENTER				
Activity Summary for the Third Quarter				
TYPE	**13/14**	**12/13**	**ATTENDEES**	**EVENTS HELD**
Conventions	13	14	20,200	Hollywood Connect, Ruckus, eBay, XRX/Stitches, Spirit of the Flame, O'Scale, PTC, Usenix, Northern California Volleyball, Northern California Train Collectors, Sysopsys, IDC Directions and Open Networking Summit
Trade Shows	8	5	12,800	DesignCon, RTC Group, Pennwell Corporation, O'Reilly-Strata, National Nameless Luminaries, Avaya, GT Sports Marketing and Pitco Food
Public Shows	12	10	10,200	Home Show, Wedding Fair, Dance Magic, Travel and Adventure Show, VietET, Korean Culture Center, NUVO, Monsters of Hip Hop, Dance Masters of California, Miss Vietnam USA, Center of Persian Language Preservation and U-Jam Fitness
Meetings	66	80	23,475	
Banquets	10	8	3,575	
Totals	**109**	**117**	**70,250**	

SANTA CLARA CONVENTION CENTER			
Revenue Summary for the Third Quarter, Year-to-Date			
13/14	**12/13**	**Budget**	**Over (Under) Budget**
$5,099,499.07	$4,704,128.53	$4,120,271.95	$979,227.12

Year-to-date catering revenue is above budget by $300,595.49. Audio-visual revenues are above budget by $109,347.34. Telecommunications is above budget by $169,342.25, and Space Rental is above budget by $434,048.23. Event Revenue is below budget by $22,750.43.

SANTA CLARA CONVENTION CENTER			
Expenses Summary for the Third Quarter, Year-to-Date			
Labor Expenses			
13/14	**12/13**	**Budget**	**Over (Under) Budget**
$3,451,862.81	$3,261,795.05	$3,326,930.01	$124,932.80
Operating Expenses			
13/14	**12/13**	**Budget**	**Over (Under) Budget**
$1,117,062.98	$1,000,074.13	$928,192.71	$188,870.27
Total Labor and Operating Expenses			
13/14	**12/13**	**Budget**	**Over (Under) Budget**
$4,568,925.79	$4,261,869.18	$4,255,122.72	$313,803.07
Net Income (Loss)			
13/14	**12/13**	**Budget**	**Over (Under) Budget**
$530,573.28	$442,259.35	($134,850.77)	$665,424.05

Third Quarter, Year-to-Date revenues of $5,099.499.07 and expenses of $4,568,925.79 have produced a **net profit of $530,573.28** or $665,424.05 more than the budgeted loss of $134,850.77.

Projects: Replaced roll up door in warehouse leading to dock 3. Replaced hot water heater in concession stand B. Painted the stair rails and the tops of the restrooms in the main lobby and created a new office for Aramark in their linen closet including cabling, painting and assembling furniture.

Fiscal Year 2013-14 Fourth Quarter Projections

TYPE	NUMBER	ATTENDEES	EVENTS SCHEDULED
Conventions	13	16,850	California Water Environment Association, Golden Gate Nationals, Catholic Charismatic, Tie-Con, Technology Services Industry Association, Northern California Volleyball/Qualifier, Uptime Institute, American Legion, California Health Information Association, CALA, PCI-SIG Devcon, Radio Ink and Flextronics
Trade Shows	7	7,700	Percona, California Apartment Association, Conference Concepts, Job Shops, Augmented Reality, Better Living Show and OTTCON.
Public Shows	12	13,900	Break the Floor, NPW-Speed Warehouse, Portsmouth, Creation Dance, IRCC, Dance Master (2 events), Antique Road Show, Dance Academy USA, Liberty Dance, California Sports Center and HIN Events
Meetings	91	35,547	
Banquets	12	6,500	
Total	**135**	**80,497**	

CONVENTION AND VISITOR'S BUREAU

Convention Sales/Marketing Department: In the Third Quarter, convention sales and marketing staff exhibited and/or attended: Presentation made to George P. Johnson organization, NCCMPI Tradeshow in San Francisco, MSI SSN Table Top Tradeshow in Sacramento, and made approximately 72 sales calls. The CVB conducted 13 site inspections of the City for future convention business.

	3rd Qtr 13-14	3rd Qtr 12-13	% Difference		3rd Qtr 13-14	3rd Qtr 12-13	% Difference
Leads	108	96	12%	**Bookings**	31	37	-16%
Attendees	88,340	85,215	3%	**Attendees**	38,940	38,425	1%
Room Nights*	60,770	63,841	-4%	**Room Nights***	17,450	18,365	-4%

(The information presented above is for the quarter only)

*Hotel room nights represent only those hotel rooms that are "blocked" and no projections are made of room nights that come in after the block is cut off by hotels or for those delegates or exhibitors who utilize hotels not included in the blocks.

Convention Services Department: The Convention Services Department contacted and serviced 20 groups representing 37,025 delegates compared to 108 groups representing 21,100 delegates for the third quarter of last year.

Visitor Marketing and Communications Department: The Visitor Marketing and Communications department in the 3rd Quarter participated in the NAJ Summit West tradeshow, attended WACVB Tech Tourism Summit, and met with SF Super Bowl Host Committee representatives. The dept. also coordinated the Santa Clara Sports Group (SCSG) quarterly meeting and met with mobile partner MobiManage. The dept. also developed and submitted a Leisure and Internet marketing budget to the Tourism Improvement District.

In addition, the dept. worked with Santa Clara hotels to update the www.santaclara.org website's Hotel Packages page to highlight theme park/hotel weekend packages. Fiscal YTD the dept. has fulfilled 2,224 visitor requests for information. For the quarter, there were a total of 137,891 unique visitors to www.santaclara.org, a 17% increase vs. previous year. The website also booked 70 Santa Clara hotel room nights.

The dept. also managed *Visit Santa Clara* social media pages, updated and produced the Santa Clara Visitors Guide brochure, monthly Chamber/CVB print and electronic newsletter, and developed a PPT presentation for the City of Santa Clara Marketing Committee meeting.

This concludes our Santa Clara Convention Center and Convention-Visitor's Bureau (SCCC-CVB) Activity Report for Fiscal Year 2013-14, Third Quarter, year-to-date. Thank you for your continued support of our activities.

Sincerely,

Steve Van Dorn
President and CEO

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-4

Date: May 1, 2014

To: City Manager for Council Action

From: Director of Human Resources

Subject: Approval of the Job Description for Utility Business Systems Manager, Setting the Control Point at $11,370 per month, and Adding to the City's Conflict of Interest Code, Disclosure Category 1.

EXECUTIVE SUMMARY:

The Utility Business Systems Manager classification is a management position responsible for managing critical utility business systems including Supervisory Control and Data Acquisition (SCADA) system, Geographic Information System (GIS), Computerized Maintenance Management System (CMMS), Asset Management Systems, Mobile Management Systems, as well as other system applications, databases, and technology infrastructure required to enhance the productivity of the Water and Sewer Utilities' business operations. The incumbent will participate in complex multi-disciplinary teams and manage complex computer hardware and software installations and implementations related to SCADA, GIS, CMMS, Asset Management, and Mobile Management Systems. The incumbent is responsible for integrating the various functions of these diverse software systems into an interrelated and interdependent system which will enable the safe and efficient operation of the water and sewer utilities.

As a member of the City's Unclassified Service, this is an "at-will" position. The incumbent serves at the discretion of the City Manager. An incumbent in this classification: demonstrates strong ethical, professional, and service-oriented leadership and interpersonal skills; sets a good example; and correctly applies the tenets of the City's Code of Ethics and Values. Staff is recommending the addition of the new job description to the City's Conflict of Interest Code, Disclosure Category 1.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the job description for Utility Business Systems Manager will allow the City to begin the recruitment. There are no disadvantages.

ECONOMIC/FISCAL IMPACT:

There is no economic or fiscal impact to the City in approving the new job description, other than administrative staff time and expense. Funding is provided for this position in the proposed Water and Sewer Utility Enterprise Fund 2013-2014 budget. The City's Control Point program reflects a range of monthly salary from 85% to 110% of Control Point. The monthly salary range for this position will begin at $9,664 (85%) and tops at $12,507 (110%) of Control Point. Typically, the entry level salary is set at the 85% level, but may vary based upon the candidate's education and experience.

RECOMMENDATION:

That the Council approve the job description for Utility Business Systems Manager, set the control point at $11,370 per month, and add this specification to the City's Conflict of Interest Code, Disclosure Category 1.

Elizabeth C. Brown
Director of Human Resources

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) New Job Description for Utility Business Systems Manager

Proposed May, 2014

CITY OF SANTA CLARA, CALIFORNIA
UTILITY BUSINESS SYSTEMS MANAGER
(898)

EDUCATION AND EXPERIENCE

Minimum Requirements:

- Education and experience equivalent to Bachelor's degree or higher in Computer Science, Management Information Systems (MIS), Information Technology, Electronic Engineering, Public and/or Business Administration or related field; and
- At least five (5) years of progressively responsible experience in information technology, including the analysis, planning, design, development, system integration, installation, verification, project management of information technology within professional business, business or municipal environments and operation of water and sewer utility field in implementation and maintenance of Computerized Maintenance Management System (CMMS), Supervisory Control and Data Acquisition (SCADA) system, Geographic Information System (GIS), Asset Management System, Mobile Management System, and Utility Billing System. At least one (1) year of which at a project management or supervisory level in the field.

Possible Substitutions:

- Additional work experience implementing a CMMS system, SCADA system, GIS system, Asset Management system, Mobile Home system and/or Utility Billing system may be substituted for education on a one year for one year basis.

Desirable Qualifications:

- An advanced degree in computer science, computer technology, business, public administration or a closely related field is highly desirable.
- Certification in GIS systems is highly desirable.
- Additional three (3) years of management experience is highly desirable.
- Additional three (3) years of experience working in water, wastewater and/or recycled water utilities.

LICENSE

- Possession of a valid California Class C driver's license is required at time of appointment and for duration of employment.
- Pipeline Assessment and Certification Program (PACP) certification must be obtained from National Association of Sewer Service Companies (NASCO) within one year of appointment.
- Possession of a valid Water Distribution Operators Certificate (Grade 2, or above) or the ability to obtain that certificate within one year of appointment.

DISTINGUISHING CHARACTERISTICS

The Utility Business Systems Manager classification is a management position responsible for managing critical utility business systems including Supervisory Control and Data Acquisition

(SCADA) system, Geographic Information System (GIS), Computerized Maintenance Management System (CMMS), Asset Management system, Mobile Management system, as well as other system applications, databases, and technology infrastructure required to enhance the productivity of the Water and Sewer Utilities' business operations. The incumbent will participate in complex multi-disciplinary teams and manage complex computer hardware and software installations and implementations related to SCADA, GIS, CMMS, Asset Management, and Mobile Management Systems. The incumbent is responsible for integrating the various functions of these diverse software systems into an interrelated and interdependent system which enable the safe and efficient operation of the water and sewer utilities.

As a member of the City's Unclassified Service, this is an "at-will" position. The incumbent serves at the discretion of the City Manager. An incumbent in this classification: demonstrates strong ethical, professional, and service-oriented leadership and interpersonal skills; sets a good example; and correctly applies the tenets of the City's Code of Ethics and Values.

TYPICAL DUTIES

Duties may include, but are not limited to the following.

Under general direction:

- Manage, facilitate and build consensus on long range technology direction and department-wide business systems application strategy to meet the department's strategic goals and objectives;
- Work closely with senior level management and other representatives to build an integrated organization-wide view of business systems application initiatives, projects and resources;
- Provide management oversight of all projects related to and contractors retained to work on CMMS, GIS and SCADA system, Asset Management system, and Mobile Home system;
- Manage and supervise the data manager (Maintenance Systems Specialist) for the water and sewer utilities, and any additional staff hired to support such systems for the department;
- Provide day-to-day guidance and management of the department's specific information systems, and project management of all department-specific information technology projects;
- Provide management oversight during emergency situations related to the department information systems, including but not limited to minor infrastructure emergencies to major natural disasters;
- Provide expert professional oversight and internal consulting related to CMMS, GIS and SCADA system, Asset Management system, Mobile Home system and/or Utility Billing system, including the integration and interrelation of these various systems to ensure the seamless transfer of data between the various systems such that the systems work cooperatively;
- Manage the design, selection, implementation, operation and maintenance of business applications software that support the department's business and operating requirements to enable the department to achieve improved organizational performance and services excellence;
- Plan, organize, coordinate, manage and administer the business systems for the water and sewer utilities;
- Manage vendor, consultant, and contractor agreements for CMMS, SCADA, GIS, Asset Management system, Mobile Home system and/or Utility Billing systems services and support;

- Write specifications, requests for proposals, requests for quotes for equipment and software, review vendor proposals and quotes;
- Support the operations and maintenance divisions through implementation and operation of CMMS, GIS, SCADA system, Asset Management system, Mobile Home system and/or Utility Billing systems and other applicable business applications;
- Conduct business and technical needs analysis, identify and prioritize resources and manage implementation of new projects;
- Foster project management excellence by establishing, implementing, and continuously improving standardized processes, procedures, tools, training and support functions;
- Troubleshoot technical problems and develop solutions with the City's Information Technology Department and maintenance management system vendor;
- Participate in the development and implementation of all SCADA technical policies and procedures including those for architecture, security, disaster recovery, standards, purchasing and service provision;
- Research, assess, and analyze business system requirements and recommend configuration changes and interfaces as required;
- Act as the liaison between the Water and Sewer Utilities and Information Technology (IT) Department, or other departments as needed, for coordination of activities related to information systems and business applications;
- Prepare reports, analyze data, and make recommendations to improve utility operations and solve system maintenance issues;
- Conduct cost benefit analysis for various technology projects for inclusion in the department's annual and five year capital improvement project budget;
- Develop financial reports, analyze and make capital and operating budget recommendations based on systems management for the department; and
- Support the Director and/or the Assistant Director of Water and Sewer Utilities with budget development and prioritization.

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge of:

- Effective leadership and management principles and practices;
- Principles, practices, methods, and techniques of information technology management, including applications configuration, software development methodologies and hardware and software options for data management, business, engineering, operations and real-time applications and interfaces;
- Theory and techniques or evaluation, requirements, structured system analysis, design, integration, testing, implementation, documentation and monitoring of systems;
- Computerized Maintenance Management Systems (e.g., Maximo, Hansen/Info), Supervisory Control and Data Acquisition (SCADA) system, Geographic Information System (GIS), Asset Management System, Mobile Management System, and Utility Billing Systems;
- Cost benefit of systems alternatives;
- Trend and directional development in informational technology as they apply to formulating technology solutions to meet goals and objectives of a large, complex water and sewer utility;
- Project management principles and best practices;
- Water and sewer utility operations, maintenance methods, principles, equipment, scheduling and planning;

- Mandated maintenance criteria for compliance with waste discharge requirements;
- Equipment, structures, devices, instrumentation, and work practices associated with water and sewer utilities operation and maintenance;
- Principles of disaster recovery and emergency operations related to utility systems;
- Principles of preventative and corrective computerized system maintenance; and
- Principles of scheduling personnel and other resources.

Ability to:

- Deal tactfully and courteously with others;
- Establish and maintain effective working relationships with those contacted in the course of work, including employees, public officials, vendors, contractors and the general public;
- Work in a team-based environment and achieve common goals;
- Manage complex projects including standards development, evaluating overall project performance and tracking;
- Work effectively with CMMS, GIS, SCADA, Asset Management, Mobile Management, and Utility Billing systems;
- Integrate the CMMS, GIS, SCADA, Asset Management, Mobile Management, and Utility Billing systems to ensure the seamless transfer of data between the various systems such that the systems work cooperatively;
- Instruct others on CMMS, GIS, SCADA, Asset Management, Mobile Management, and Utility Billing system operation in a training environment, through user guides, and one-on-one by telephone or e-mail;
- Analyze situations to define issues and draw appropriate conclusions;
- Effectively handle multiple priorities, organize workload, and meet strict deadlines;
- Communicate clearly, concisely, and effectively, both orally and in writing; and
- Walk or stand for extended periods of time and bend, stoop, crawl, climb, and lift as necessary to perform assigned duties.

SUPERVISION RECEIVED

Works under the general supervision of the Director or Assistant Director of Water and Sewer Utilities.

SUPERVISION EXERCISED

May supervise Water and Sewer Utilities staff of professional, paraprofessional, administrative and other staff as assigned.

OTHER REQUIREMENTS

May be required to work unusual hours, including evenings and weekends, and to be available on an on-call basis.

CONFLICT OF INTEREST

Incumbents in this position are required to file a Conflict of Interest statement upon assuming office, annually, and upon leaving office, in accordance with City Manager Directive 100.

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-5

Date: May 5, 2014

To: City Manager for Council Action

From: Director of Public Works/City Engineer

Subject: Acknowledgement and Acceptance of Donations Given in Support of the 27th Annual Arbor Day/Earth Day Celebration

EXECUTIVE SUMMARY:

The 2014 Arbor Day/Earth Day celebration was held on Friday, April 25th. The event was scheduled to be held at the Triton Museum Grounds. The children's program was moved to the Council Chambers because of inclement weather. Public Works Department Staff did an outstanding job of making last minute adjustments to change the programming because of the bad weather. About 280 students from Pomeroy Elementary and Don Callejon schools attended the celebration. The City was presented with a "Tree City USA" plaque and flag from the United States Department of Forestry for its tree preservation and maintenance program as well as a "Growth Award" for the completion of various tree and recycling programs during the past year. School children were entertained by the musical group ZunZun, which was funded by a grant from the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). The program included information on the importance of trees in our environment as well as pollution prevention. There were more than 30 environmentally friendly exhibitors with educational booths on display. Donations from local businesses were used as raffle prizes for the students in attendance. The local businesses that provided donations are listed in the attachment.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Arbor Day/Earth Day Celebration is an excellent educational outreach opportunity for the City of Santa Clara. It allows the City to interact with local schools and the community to emphasize the importance of environmental issues. The annual event is also an integral component for maintaining the City's status as a "Tree City USA".

The acceptance of in-kind donations to raffle off to participating students is mutually beneficial for both the schools and the donors; it helps incentivize the schools to participate in the program and is an opportunity for environmentally relevant businesses to show community support.

ECONOMIC/FISCAL IMPACT:

There is no cost to the City other than staff time and related expense.

RECOMMENDATION:

That the Council acknowledge and accept the donations given in support of the 27th Annual Arbor Day/Earth Day celebration.

Rajeev Batra

Rajeev Batra
Director of Public Works/City Engineer

APPROVED:

Sheila A. Zunker

for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) List of Donors

LIST OF DONORS FOR ARBOR DAY/EARTH DAY 2014

RAFLLE PRIZES

Business	Donation
Breathe California	Tshirt/umbrella/compass/jump rope
Children's Discovery Museum	Family 4-pack tickets
Children's Musical Theater	2 admission tickets
Chipotle	10 free kids meals
Gilroy Gardens	2 admission tickets
K1 Speed	2 Gift Cards
Local Foods Wheel	5 Local foods wheels
Marine Science Institute	Family membership
Mondo Burrito	2 Vouchers
Oakland A's	2 Field tickets
Our City Forest	Urban Forest Photo Book
Pizza Chicago	2 $10 dining coupons
Pump It Up	10 guest passes
Raging Waters	2 Complimentary passes
Renee's Garden Seeds	Box of assorted seed packets
Sharks Ice	2 Free skating passes
Slow Food South Bay	1 Compost Bin
Sprouts Farmer's Markets	$50 Gift card
Territorial Seed Company	Box of assorted seed packets
The Jungle Island	4 passes
The Fish Market	$50 Dinner Letter
The Tech Museum of Innovation	4 Guest Vouchers
Whole Foods Market (Cupertino)	1 case of bananas
Winchester Mystery House	2 Tour Tickets

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-6

Date: May 1, 2014

To: City Manager for Council Action

From: Director of Human Resources

Subject: Approval of the Revised Job Description for Per Diem Police Officer Special Events As Needed

EXECUTIVE SUMMARY:

On October 22, 2013, the City Council approved the revised job description for Per Diem Police Officer Special Events As Needed. This job description is coming back to the Council to revise one of the minimum qualifications. The revision includes that a candidate may be a retired full time Peace Officer with a California Law Enforcement Agency. Additionally, emphasis is added in the revised job description that retirees who were medically retired (industrial or non-industrial) should confirm with their retirement plan that accepting employment as a Per Diem Police Officer will not jeopardize their pension.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

These revisions are recommended to broaden the recruitment to include additional qualified individuals, and there are no disadvantages.

ECONOMIC/FISCAL IMPACT:

There is no economic or fiscal impact to the City in approving the changes to the job description, other than administrative staff time and expense.

RECOMMENDATION:

That the Council approve the revised job description for Per Diem Police Officer Special Events As Needed.

Elizabeth C. Brown
Director of Human Resources

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report:

1) Revised Job Description for Per Diem Police Officer Special Events As Needed

Proposed May, 2014
Approved October, 2013

CITY OF SANTA CLARA, CALIFORNIA
PER DIEM POLICE OFFICER
SPECIAL EVENTS
(As Needed)

EDUCATION AND EXPERIENCE

- Currently employed as a Full Time or Part Time Peace Officer with a California Law Enforcement Agency; or
- Currently working as a Level I Reserve Police Officer with a California Law Enforcement Agency; or
- Retired as a Full Time Peace Officer with a California Law Enforcement Agency.

LICENSES &/OR CERTIFICATES

- Possession of valid California Class C driver's license is required;
- Proof of a current Basic or higher certificate issued by the California Commission on Peace Officer Standards and Training (POST) is required at time of application and for duration of employment (Not required for Reserve Police Officers, see below);
- Must have passed Field Training Program with home agency as required by POST;
- Must have passed Probationary Period with home agency;
- Pursuant to Government Code Section 1031, applicants must be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship; and
- Must maintain current CPR and First Aid Certification.

Reserve Police Officers Must Also Provide:

- Proof of completion of Level 1 Reserve Peace Officer POST Regular Basic Course (Reserve Police Officers Only).

PHYSICAL AND OTHER REQUIREMENTS

- Must be at least 20 years of age at time of application filing and 21 years of age at time of job appointment;
- Must meet and maintain required peace officer employment standards as required by POST;
- Per the California Public Employee Retirement System (CalPERS) "Public Safety Retirees on service retirement may not work more than 960 hours in a fiscal year for all CalPERS employers";
- Retirees who were medically retired (industrial or non-industrial) should confirm with their retirement plan that accepting employment as a Per Diem Police Officer will not jeopardize their pension;
- Must possess the strength and physical ability necessary to perform the essential functions of the position;
- Must possess hearing, speech, and mental capabilities sufficient to perform all of the essential functions of the position; and
- Must be willing to be fingerprinted and pass a departmental interview, psychological, medical, and background investigation prior to appointment.

Vision requirements:

- Must possess vision including color, night, depth, and peripheral vision sufficient to perform all of the essential functions of the position; and
- Must possess visual acuity of not less than 20/80 vision in each eye uncorrected, and corrected to 20/30 in each eye.

EXCEPTION: Applicants with correction afforded by soft contact lenses are exempt from the minimum uncorrected vision standard of 20/80, provided their corrected vision is 20/30 in each eye.

Candidates are required to pass a departmental interview prior to being given a conditional job offer. If given a conditional offer of employment, candidates must also pass medical and psychological exams, as well as a background investigation.

TYPICAL DUTIES

Duties include but are not limited to the following:

- Under general supervision: patrol designated areas in car, by foot, by bicycle, or other means to preserve law and order;
- Direct traffic;
- Enforce parking regulations, issue citations and tow vehicles that are in violation of codes;
- Observe, monitor, and control routine and unusual traffic conditions; assist and advise motorists; issue traffic citations and warnings;
- Discover and prevent the commission of crimes, and enforce laws and ordinances;
- Maintain awareness of and remain alert for wanted suspects, known criminals, stolen vehicles, missing persons, traffic violators, and crimes in progress;
- Conduct investigations at scenes of incidents to which summoned or incidents observed to determine what, if any, crime has been committed;
- Respond to calls for the protection of life and property, the enforcement of laws and ordinances, general public service calls, and complaints including those involving automobile accidents, traffic hazards, misdemeanor and felony incidents;
- Investigate complaints and take appropriate action, which may include the use of deadly or non-deadly force;
- Use sound judgment under adverse, stressful conditions;
- Identify, collect, preserve, process, and book evidence;
- Locate and interview victims and witnesses;
- Work in partnership with the Santa Clara Police Department and the District Attorney's Office to follow through on criminal complaints;
- Apprehend and arrest offenders for crimes committed under federal, state, and local laws and codes;
- Control and mitigate people under the influence of drugs or alcohol or other potentially hostile situations;
- Establish and preserve good relationships with the general public;
- Answer questions from the public concerning local and state laws, procedures, and activities of the department, apply good public relation principals;
- Participate in continuous training required and approved by POST to enhance law enforcement skills including firearms proficiency, defensive driving skills, apprehension and arrest techniques, investigative skills, and general law enforcement skills;

- Attend meetings and trainings;
- Prepare a variety of reports including those on activities, operations, arrests made, and unusual incidents observed; prepare investigative reports and case information;
- Testify in courts and at hearings; prepare and present case evidence;
- Escort prisoners to county jail, juvenile hall, or Santa Clara Police Department; and
- Perform other duties as assigned.

KNOWLEDGE, SKILLS, AND ABILITIES

Possession of the following knowledge, skills, and abilities at a level necessary to do police work:

Interest in Police Work – willingness to handle routine, repetitive tasks; enforce laws that may conflict with personal values; relate to others; work with minorities; work with fellow officers and the general public; participate in situations which require courage; function in different roles; work under hostile conditions, work under hazardous conditions over long periods of time; accept new job duties; and work weekends, holidays.

Ability to Take Orders – the ability to relate to supervisors; to maintain objectivity; to take criticism and control temper.

Ability to Take Responsibility - the ability to work without supervision; reliability; ability to participate in situations which require courage, refrain from abusing authority vested in official role; maintain confidentiality of information; and assume a command presence in conflict situations.

Self-Control – the ability to control one's temper, maintain objectivity; take criticism, function under oral or physical stress; use authority effectively; function in different roles, work under hazardous and hostile conditions for long periods of time, and work at accident and crime scenes which involve severe personal injuries, or in situations which involve loss of life.

Ability to Communicate Effectively – the ability to testify accurately; obtain information from witnesses under normal and stressful conditions; communicate in person, in writing, and via radio.

Ability to Make Reasonable Decisions Rapidly – the ability to reason logically; apply discretion in maintaining confidentiality of information; observe and interpret what is observed; evaluate situations and people effectively; and apply good judgment.

Willingness to Arrest People – willingness to take actions which will result in imposing penalties on others, including: depriving them of their freedom; taking a life if necessary; and fighting to win and injuring another if required; use techniques and applications of self defense and proper use of force.

Ability to Learn – the immediate potential to learn to write readable, comprehensible reports; to read and interpret relevant laws and procedural material including designated SCPD Operations Manual Sections and Stadium Security Procedures; read maps; apply regulations; communicate verbally with others under stress, analyze material and situations; and record observations from accident and crime scenes.

Emotional Stability – the ability to take verbal abuse; the possession of: honesty, integrity, maturity,

tolerance, self-confidence, truthfulness and psychological stability; ability to meet the physical and psychological demands of police work.

Ability to Problem Solve – the ability to identify problems or issues that are of concern to residents of the City or Stadium attendees.

PHYSICAL DEMANDS AND WORKING ENVIRONMENT

Environment:
The employee is regularly exposed to outside weather conditions; extreme cold, extreme heat, potentially hostile environments; extensive public contact. The noise level in the work environment is usually moderate but may be very loud due to crowd noise, music, sirens, firearm training, etc. Incumbents are required to work various shifts, including evenings and weekends, and may be required to travel to attend meetings or court appearances.

Physical:
Primary functions require sufficient physical ability to work in a law enforcement setting; restrain or subdue individuals; walk, stand, sit, bike or run for prolonged periods of time; occasionally stoop, bend, kneel, crouch, reach, and twist; occasionally climb and balance; regularly push, pull, lift, and/or carry light to moderate weights; frequently lift and/or move moderate to heavy weights; occasionally lift and/or move heavy weights; requires a sense of touch, finger dexterity, and gripping with hands and fingers;

SUPERVISION RECEIVED
Follows the chain of command and works under the general supervision of a Santa Clara Police Officer or Sergeant or other classification as assigned.

SUPERVISION EXERCISED
- May assist in training of personnel.
- May assume a team leader position and supervise others.

SPECIAL CONDITIONS
- Will be required to work special events.
- Will be required to work odd and unusual hours, including evenings, weekends and holidays.
- Will be required to purchase Department Uniforms (reimbursement will occur after working ten regular events).
- Will be required to provide safety equipment (defined as ballistic vest, duty belt, and firearm) approved by the Santa Clara Police Department.
- Per the California Public Employee Retirement System (CalPERS) "Public Safety Retirees on service retirement may not work more than 960 hours in a fiscal year for all CalPERS employers".

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-7

Date: May 13, 2014

To: City Manager for Council Action

From: Chief of Police

Subject: Pass to Print an Ordinance Amending City Code Chapter 5.35 (Taxicabs) of Title 5 (Business Licenses and Regulations)to Ensure that Pedicabs are Regulated like Taxicabs

EXECUTIVE SUMMARY:

The City of Santa Clara currently has Chapter 5.35 in its City Code which has regulations that apply to taxicabs to ensure they operate safely and their fares are reasonable. With the opening of Levi's® Stadium, the City expects pedicabs (human powered pedal-operated vehicles) to begin operating within the City. City staff recognizes that our current taxicab ordinance doesn't address pedicabs and would like to adopt regulations to include pedicabs.

Staff members from both the Police Department and the City Attorney's Office have worked closely to draft these new code provisions. In addition, the City Attorney's Office reviewed pedicab ordinances from other cities. The staff has determined that the current taxicab licensing and permitting ordinance is the best location to incorporate new pedicab regulations.

Under this ordinance, each pedicab company would be subject to a background investigation and an annual pedicab safety inspection. Each company also must maintain a proper level of insurance. All pedicab drivers must hold a valid pedicab permit to operate a pedicab in the City. Pedicab drivers would have to demonstrate proficient knowledge of the local streets as well as traffic laws of the City and State. Pedicab drivers would also have to demonstrate that they are able to safely operate a pedicab, and would be subject to random drug and alcohol testing.

Members of the police department Special Events and Homeland Security Unit have reviewed the pedicab ordinance and the uses of pedicabs at other stadium locations. This ordinance puts our city and stadium in line with the best practices noted at other major event facilities in the country.

The potential use of pedicabs is being integrated into the overall stadium traffic management plan. Due to the width of pedicabs, they would be prohibited on the creek trail where they could be a hindrance to pedestrian traffic. The exact locations and flow patterns for pedicabs before and after stadium events is still under review.

The following two changes would be made to the taxicab ordinance under this proposal:

First, Section 5.35.020 subsection (g) would be amended to replace the words "other device" and insert the words "flat rate" as indicated below:
g) "Taxicab" shall mean a passenger vehicle, designed for carrying not more than eight persons, excluding the driver, used to transport persons for compensation on public streets; the compensation for which is determined by a taximeter or *flat rate* which determines a charge for distance traveled and/or time expended.

Second, a new subsection would be added to 5.35.240 describing the equipment needed for any human powered taxicabs to read as follows:

d) Any human powered taxicab or vehicle regulated by this Chapter shall at all times have:
   (1) A battery or generator operated headlight(s) and taillight(s);
   (2) Turn signals visible from the front and rear of the vehicle;
   (3) Hydraulic or mechanical disc brakes; and,
   (4) Spoke reflectors placed on each wheel and tape type reflectors showing the front and the back width of the vehicle."

ADVANTAGES AND DISADVANTAGES OF ISSUE:
This ordinance will include pedicabs in the current taxicab license and permit plan. There are no disadvantages to the City in adopting the ordinance.

ECONOMIC/FISCAL IMPACT:
There is no cost to the City other than administrative staff time and expense.

RECOMMENDATION:
That the Council pass to print an Ordinance amending Chapter 5.35 (Taxicabs) of Title 5 (Business Licenses and Regulations), of "The Code of the City of Santa Clara, California" to ensure that pedicabs are regulated like taxicabs.

Michael J. Sellers
Chief of Police

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Ordinance-Taxicab Revision

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.35 ("TAXICABS") OF TITLE 5 ("BUSINESS LICENSES AND REGULATIONS") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO ENSURE THAT PEDICABS ARE REGULATED LIKE TAXICABS

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City of Santa Clara has regulations that apply to taxicabs to ensure they operate safely and their fares are reasonable and set forth clearly;

WHEREAS, with the opening of Levi's® Stadium, the City expects pedicabs (human powered pedal-operated vehicles) to begin operating within the City;

WHEREAS, the City desires to adopt regulations that ensure the safe operation of pedicabs; and,

WHEREAS, for ease of regulation, the City wishes to use its current taxicab license and permit scheme for pedicabs, and therefore adopts the following amendments to conform pedicabs to existing taxicab regulations.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That subsection (g) of Section 5.35.020 ("Definitions") of Chapter 5.35 ("Taxicabs") of "The Code of the City of Santa Clara, California" ("SCCC") be amended to omit the words "other device" and in their place insert the words "flat rate."

SECTION 2: That a new subsection (d) be added to SCCC 5.35.240 ("Equipment and conditions required") of Chapter 5.35 ("Taxicabs") of "The Code of the City of Santa Clara, California" to read as follows:

"(d) Any human powered taxicab or vehicle regulated by this Chapter shall at all times have:

(1) A battery or generator operated headlight(s) and taillight(s);

(2) Turn signals visible from the front and rear of the vehicle;

(3) Hydraulic or mechanical disc brakes; and,

(4) Spoke reflectors placed on each wheel and tape type reflectors showing the front and the back width of the vehicle."

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 4: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this _____ day of May, 2014, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None
I:\ORDINANCES\Chapter 5.35 Taxicab revision 05-13-14.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7A-8

Date: May 14, 2014

To: City Manager for Council Action

From: Director of Water and Sewer Utilities

Subject: Resolution to Approve the Water Supply Assessment for the proposed Santa Clara Square development at 2455-2727 Augustine Drive and 3333 Bowers Avenue

EXECUTIVE SUMMARY:

California Water Code Section 10910 and Section 15155(b) of the Guidelines to the California Environmental Quality Act require a water utility to prepare a water supply assessment ("Assessment") for any development project that, among other criteria, includes more than 500 dwelling units, 500,000 square feet of retail space, 250,000 square feet of office space, employs more than 1,000 people or would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project. On April 17, 2014, the proponent of a proposed office/retail development at 2455-2727 Augustine Drive and 3333 Bowers Avenue ("Applicant") requested an Assessment. The development proposes to construct more than 250,000 square feet of office space. Therefore, this Assessment is required to be brought to Council for the Council's approval, denial, or other direction. A water utility has ninety days to respond to a water supply assessment request.

The Assessment requires an analysis of the utility's current and future water supplies as well as the current and projected water demands in the utility's service area. The Assessment must include a determination as to whether additional water supplies are necessary or if sufficient water supplies exist for the proposed development project. The law also requires that the water utility's governing body approve water supply assessments. The City Council is the governing body for the City's Water Utility.

City staff has prepared an Assessment for the proposed development at 2455-2727 Augustine Drive and 3333 Bowers Avenue. The Assessment provides a detailed analysis of the amount of water necessary to meet the needs of the proposed development and the City's ability to supply that amount of water.

The assessment found that the City's water utility has sufficient water supplies to meet the projected water demand of this development during normal, single dry year, and multiple dry year scenarios.

A copy of the Assessment's Appendices is available in the Council Offices for review.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Council's approval of the Assessment is necessary for the development to be approved. However, Council's approval, denial, conditional approval or any act on the Assessment does not guarantee that the project will be approved, and does not obligate the City to approve, deny, conditionally approve, take any action on, or make any decision on the associated project application.

ECONOMIC/FISCAL IMPACT:

The acceptance or rejection of this water supply assessment does not have a fiscal impact on the City. However, the approval of this water supply assessment is a required part of the development process. The development will have an economic/fiscal impact on the City. That impact is not analyzed as part of this report.

RECOMMENDATION:

That the Council adopt a resolution approving the Water Supply Assessment for the office/retail development at 2455-2727 Augustine Drive and 3333 Bowers Avenue.

Christopher L. de Groot
Director of Water and Sewer Utilities

APPROVED:

Sheila A. Zuckerman
for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Resolution
2) Santa Clara Square Development Application Water Supply Assessment

I:\Water\MEMOS\AGENDA\2014\WSA_Santa Clara Square\Agenda Report_Santa Clara Square.doc

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, APPROVING A WATER SUPPLY ASSESSMENT FOR A PROPOSED OFFICE/RETAIL DEVELOPMENT AT 2455-2727 AUGUSTINE DRIVE AND 3333 BOWERS AVENUE

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, the City of Santa Clara ("City") approved and adopted an Urban Water Management Plan in 2011;

WHEREAS, California Water Code Section 10910 and Section 15155(b) of the Guidelines to the California Environmental Quality Act ("CEQA") require a water utility to prepare a Water Supply Assessment for development applications for "water-demand projects";

WHEREAS, Section 15155(b) of the CEQA Guidelines and Section 10910(g) of the California Water Code require the governing body of a public water system that will serve a "water demand project" to determine whether to approve a water supply assessment at a regular or special meeting;

WHEREAS, the City is a public water supplier within the City limits and the City Council of the City of Santa Clara is the governing body of the City's public water system;

WHEREAS, the City of Santa Clara requires that landscaping for projects be drought tolerant and recycled water be used for irrigation, cooling towers and other permitted uses when properties are proximate to recycled water resources to reduce the cumulative use of potable water;

WHEREAS, on April 17, 2014, the proponent of a development project ("Applicant") requested a Water Supply Assessment for an office/retail development at 2455-2727 Augustine Drive and 3333 Bowers Avenue ("Project");

WHEREAS, under Section 15155(a)(1)(C) of the CEQA Guidelines and Section 10912(a)(3) of the Water Code, a project that includes more than 250,000 square feet of office space requires a Water Supply Assessment. Accordingly, the Applicant requested an Assessment for the Project on April 17, 2014; and,

WHEREAS, City Staff prepared a Water Supply Assessment for the Project on May 2, 2014 ("Project WSA"), a true and correct copy which is attached hereto as Exhibit A.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. Exhibit A. The Water Supply Assessment for the proposed development at 2465-2727 Augustine and 3333 Bowers, is attached hereto and incorporated as if fully set forth herein.

2. Approval of Project WSA. The Council has reviewed the Project WSA at a regular public meeting conducted on May 20, 2014. Based upon the data and conclusions set forth therein, and the evidence and testimony presented at the public meeting, the Council hereby finds that there is adequate water to supply the Project without creating a negative impact on the groundwater basin and that the City has an adequate supply to provide water for the project during single or multiple dry years for at least a 20-year projection, and the Council hereby approves the Project WSA.

3. No Obligation to Act on the Project Application. The Council's approval of the Project WSA is limited to approving the Project WSA; approving the Project WSA does not approve the application for the Project. Nothing in this resolution or the Council's approval of the Project WSA shall be construed as requiring the City or its Council to consider, act on, approve, conditionally approve, deny, or take any other action on the application to develop the Project.

4. Direction to Staff. Staff is hereby directed to include the Project WSA, the 2010 City of Santa Clara Urban Water Management Plan, and any other applicable Urban Water Management Plan related documents in the appendix Addendum No. 2 of the Environmental Impact Report for the Project.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

6. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Exhibit A, Project Water Supply Assessment

CITY OF SANTA CLARA
WATER AND SEWER UTILITIES

SANTA CLARA SQUARE

DEVELOPMENT APPLICATION

WATER SUPPLY ASSESSMENT FOR COMPLIANCE WITH CALIFORNIA WATER CODE SECTION 10910

Approved by City Council
Resolution # TBD

1500 WARBURTON AVE
SANTA CLARA, CA 95050

SANTA CLARA SQUARE

DEVELOPMENT APPLICATION

WATER SUPPLY ASSESSMENT FOR COMPLIANCE WITH CALIFORNIA WATER CODE SECTION 10910

Table of contents

Executive Summary 3
Introduction 4
Water supply 5
    Projected potable water supply 7
    Groundwater 9
    Projected groundwater supply 9
    Projected recycled water supply 12
Water demands 14
    Projected water demand for the proposed project 16
    Projected water demand for other proposed projects 18
Comparison of water demand and water supply 21
    Single dry year 21
    Multiple dry year 21
Conclusion 26
Appendix A 27
Appendix B 28
Appendix C 29
Appendix D 30
Appendix E 31

SANTA CLARA SQUARE

WATER SUPPLY ASSESSMENT FOR COMPLIANCE WITH CALIFORNIA WATER CODE SECTION 10910

EXECUTIVE SUMMARY

This water supply assessment ("WSA") has been prepared by the City of Santa Clara ("City") Water and Sewer Utilities to provide updated water supply information for the Santa Clara Square project ("Project"). The WSA will be included with the Addendum to the environmental impact report ("EIR Addendum") that the City is preparing for the Project in accordance with the California Water Code and the California Environmental Quality Act ("CEQA"). A WSA is solely advisory and does not constitute a commitment to supply water for a project. The City is the CEQA lead agency for the Santa Clara Square project and has an independent obligation to analyze the Project's potential water supply impacts as part of the EIR Addendum.

In May 2009, the City certified an environmental impact report ("EIR") prepared pursuant to CEQA for a previously proposed project, referred to as the Augustine-Bowers Office Park (the "2009 project"). The 2009 project included 1,969,600 square feet of office and 35,000 square feet of retail uses, or a total of 2,004,600 square feet of development. In September 2008, the City Council approved a WSA for the 2009 project ("2008 WSA"), prior to the adoption of the City's currently applicable 2010 Urban Water Management Plan ("UWMP"). The 2008 WSA was attached as Appendix G to the 2009 project EIR. The 2008 WSA determined that the 2009 project would require 366.6 acre-feet per year (acre ft/year) of water, and this projected demand was incorporated into the demand projections of the 2010 UWMP, which was adopted by the City Council in 2011. The Irvine Company acquired the site for the approved 2009 project in 2012.

In 2014, the Irvine Company proposed amending the site development plan to include 16.8 acres of existing office park development adjacent to the project, and to modify the size of the development to have 1,862,100 net square feet (nsf) of office space, 138,000 nsf of retail space, and 661,900 nsf of landscaping. The 2014 proposed Project would result in 4,500 square feet less development than approved for the 2009 project. As currently proposed, the Santa Clara Square project would utilize 360.9 acre ft/year of water, or approximately 5.7 acre ft/year less than the demand projected in the 2008 WSA. The Project will also use approximately 43.5 acre ft/year of recycled water for a large portion of new landscaping and reduce the project's potable demand to 317.4 acre ft/year, or 49.2 acre ft/yr less than the 2008 WSA demand projection.

This WSA updates the proposed Project's water demand with reference to the 2010 UWMP. It should be noted that the 2008 WSA for the prior project was analyzed with respect to the assumptions contained in the 2005 UWMP that was in effect at that time. Consistent with the California Water Code, the UWMP considers the City's water supply and demand over a 25-year period under normal, single dry, and multiple dry year conditions. Based on the use of conservative demand assumptions, the City's ability to manage demand if necessary during drier periods, the possibility of implementing additional conservation measures and increased recycled water use, and potential supply augmentation, the UWMP concludes that the City will be able to meet demand, including the Project's water use, under all of the future scenarios considered in the plan. As a result, this WSA concludes that City water supplies will also be sufficient to meet Project demand in normal, single dry, and multiple dry years over a 25-year analysis period, exceeding the California Water Code's 20-year analysis period requirement for Water Supply Assessments.

INTRODUCTION

The Santa Clara Square project ("Santa Clara Square" or the "Project") is located on approximately 47.6 acres at 2455-2727 Augustine and 3333 Bowers in the City of Santa Clara ("City"). The project would demolish the existing commercial buildings and construct 1,862,100 net square feet (nsf) of office space and 138,000 nsf of retail space. The Project also entails developing 661,900 square feet of new landscape, which will be irrigated with recycled water where available.

In 2009, the City certified an environmental impact report (EIR) and approved an application for the Augustine-Bowers Office Park located at 2620-2727 Augustine Drive (the "2009 project"), including 1,969,600 square feet of office and 35,000 square feet of retail uses.[1] The City water utility approved a WSA for the proposed development in September 2008 using the 2005 UWMP. The 2008 WSA was attached as Appendix G to the 2009 project EIR. After the approval of the 2008 WSA, the Project site was sold to the Irvine Company, which subsequently proposed to modify the site development plan to include 16.8 acres of existing office park development adjacent to the project, 1,862,100 net square feet (nsf) of office space, 138,000 nsf of retail space, and 661,900 nsf of landscaping. In April 2014, the water utility confirmed that the 2008 proposed development had been incorporated into the 2010 UWMP water demand estimates and projections.[2]

On April 17, 2014 the Applicant submitted a request for a new Water Supply Assessment ("WSA" or "Assessment") in accordance with the California Water Code and the California Environmental Quality Act in conjunction with the review of the proposed Project. This second Assessment includes a supplemental water supply analysis which updates the Project description and the Project's water demand and supply in the context of the current 2010 UWMP.

The City of Santa Clara's City Council approved and adopted an Urban Water Management Plan in 2011 ("UWMP" or "2010 UWMP"). The 2010 UWMP did not specifically include or address the 2009 project since it was proposed and evaluated prior to the adoption of the 2010 UWMP. However, the UWMP included projected increases in water demand due to densification and intensification of both residential and non-residential land uses, and incorporated the 2009 project's water demand as analyzed in the 2008 WSA and included in the certified 2009 EIR.

This Assessment relies on the data contained in and used to develop the UWMP. Unless noted, all figures in this Assessment are in acre-feet and are for total water demand or supply, i.e. both potable and recycled water.

The findings of this Assessment will be submitted to the City Council for approval and included in the environmental review process. The City's approval, denial, conditional approval or any act on this Assessment does not guarantee that the Project will be approved and does not obligate the City to approve, deny, conditionally approve, take any action, or make any decision on the Project application.

[1] Augustine-Bowers Office Park EIR, certified by City Council Resolution No. 09-7618, May 9, 2009.

[2] Augustine-Bowers Office Park WSA approved by City Council Resolution #08-7564 on September 30, 2008.

The City of Santa Clara has four sources of water. These sources include two treated water sources, groundwater, and recycled water. Contracts for the two treated water sources, the Santa Clara Valley Water District ("SCVWD" or "District") and the San Francisco Public Utilities Commission ("SFPUC"), are contained in Appendices A and B respectively. The City purchases recycled water from South Bay Water Recycling ("SBWR"). The contract for recycled water is contained in Appendix C. The City also owns and operates 27 groundwater wells located within the City's boundaries.

Recycled water use within the City is limited by the availability of acceptable uses and proximity to the recycled water distribution system. The use of treated surface water from SCVWD and SFPUC is limited by the respective contracts.

The City has projected meeting anticipated future water demands using the City's four existing water supplies and water conservation. The City's analysis of future water demand and available supply, which will be discussed later in this Assessment, indicates that additional water supplies are not necessary to meet current projected demands. Tables 1a and 1b below show the anticipated volume of water that will be used from each source to meet the expected demands projected in the UWMP. The calculation of the future water demands for this Project will be discussed in detail later in this Assessment.

Table 1a – With SFPUC
Water Supply Projections by Water Source (acre-ft/yr) [3,4]

Source	2010	2015	2020	2025	2030	2035
Groundwater	13,980	23,048	23,048	23,048	23,048	23,048
SFPUC	2,454	5,040	5,040	5,040	5,040	5,040
SCVWD	4,372	4,570	4,570	4,570	4,570	4,570
Recycled Water	2,409	4,000	4,300	4,500	4,500	4,500
Conservation	0	694	795	874	930	930
Total	23,215	37,352	37,753	38,032	38,088	38,088

The current contract with SFPUC indicates that if certain conditions are met, the City may be required to reduce or eliminate its take from SFPUC. Table 1b incorporates all of the assumptions listed above and the additional assumption that the SFPUC supply will be unavailable for 2018 and beyond. In a worst case scenario, the City of Santa Clara could lose its anticipated 4.5 MGD (5,040 acre-ft/yr) supply from SFPUC, reducing the total water supply projections by 5,040 acre-ft/yr from 2018 through 2035.

[3] Water Supply Agreement between The City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County, July 2009.

[4] Page 89 of Master agreement provides "The allocation of that total amount (9 MGD) between San Jose and Santa Clara shall be as set forth in their individual Water Sales Contracts" Santa Clara's portion of the 9 mgd is half.

Table 1b – Without SFPUC
Water Supply Projections by Water Source (acre-ft/yr)[5]

Source	2010	2015	2020	2025	2030	2035
Groundwater	13,980	23,048	23,048	23,048	23,048	23,048
SFPUC	2,454	5,040	0	0	0	0
SCVWD	4,372	4,570	4,570	4,570	4,570	4,570
Recycled Water	2,409	4,000	4,300	4,500	4,500	4,500
Conservation	0	694	795	874	930	930
Total	23,215	37,352	32,713	32,992	33,048	33,048

If the City was required to eliminate the usage of water from SFPUC, the City would consider maintaining its existing 2010 UWMP total water supply projections by increasing groundwater utilization, increasing imported SCVWD surface water supply, or a combination of the two supplies.[6]

The City of Santa Clara's 2002 Water Master Plan examined possible mitigation measures to be taken in the event that the supply from SFPUC was lost either temporarily or long term. These mitigations included the increased use of groundwater and treated water from the District. As a result of the analysis in the 2002 Master Plan two new wells (wells 32 and 34) were installed in the area north of Highway 101 in a previously untapped area of the basin. In the last 10 years, from 2004-2013, the City of Santa Clara has pumped between 13,930 acre-ft and 15,943 acre-ft of groundwater annually. These volumes are lower than the amount that has historically been pumped. The historic high for groundwater utilization occurred in FY1986/87 when 23,048 acre-ft was extracted. The historic high for groundwater production also occurred prior to the installation of wells 32 and 34, in a previously untapped portion of the City. Each of these wells has a production rating of 1,000 gpm or 1,613 acre-ft/year. Therefore, the use of 23,048 acre-ft/yr as a supply for groundwater is conservative based on the availability of the two new wells.

Increased use of recycled water could also be used to mitigate a portion of the loss of other supplies. From 2011 - 2012, the City expanded its recycled water distribution system by 30 percent and increased the system from 26 miles to 34 miles.

[5] City of Santa Clara Urban Water Management Plan, page 24.

[6] City of Santa Clara 2002 Water Master Plan.

PROJECTED POTABLE WATER SUPPLY

The Santa Clara potable water system is separated into four interconnected zones in order to provide optimum pressures throughout the City. The four pressure zones and the location of the Project are shown in Figure 1.

Figure 1

Pressure Zones

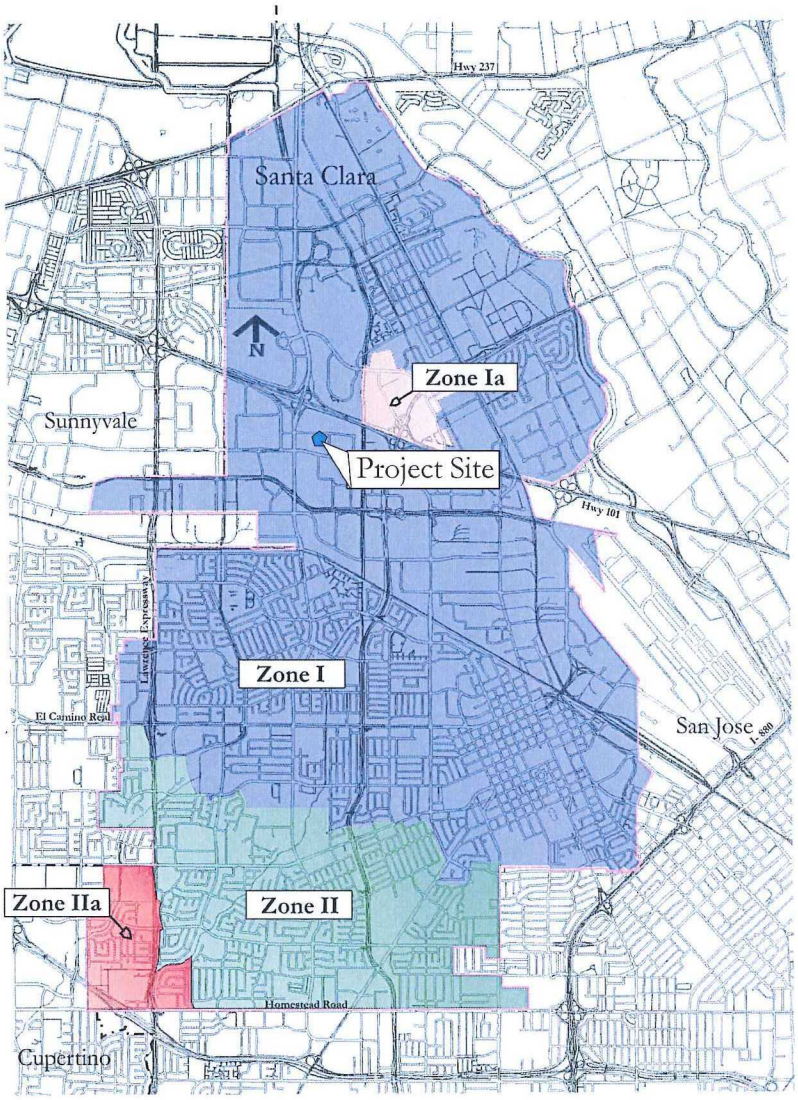
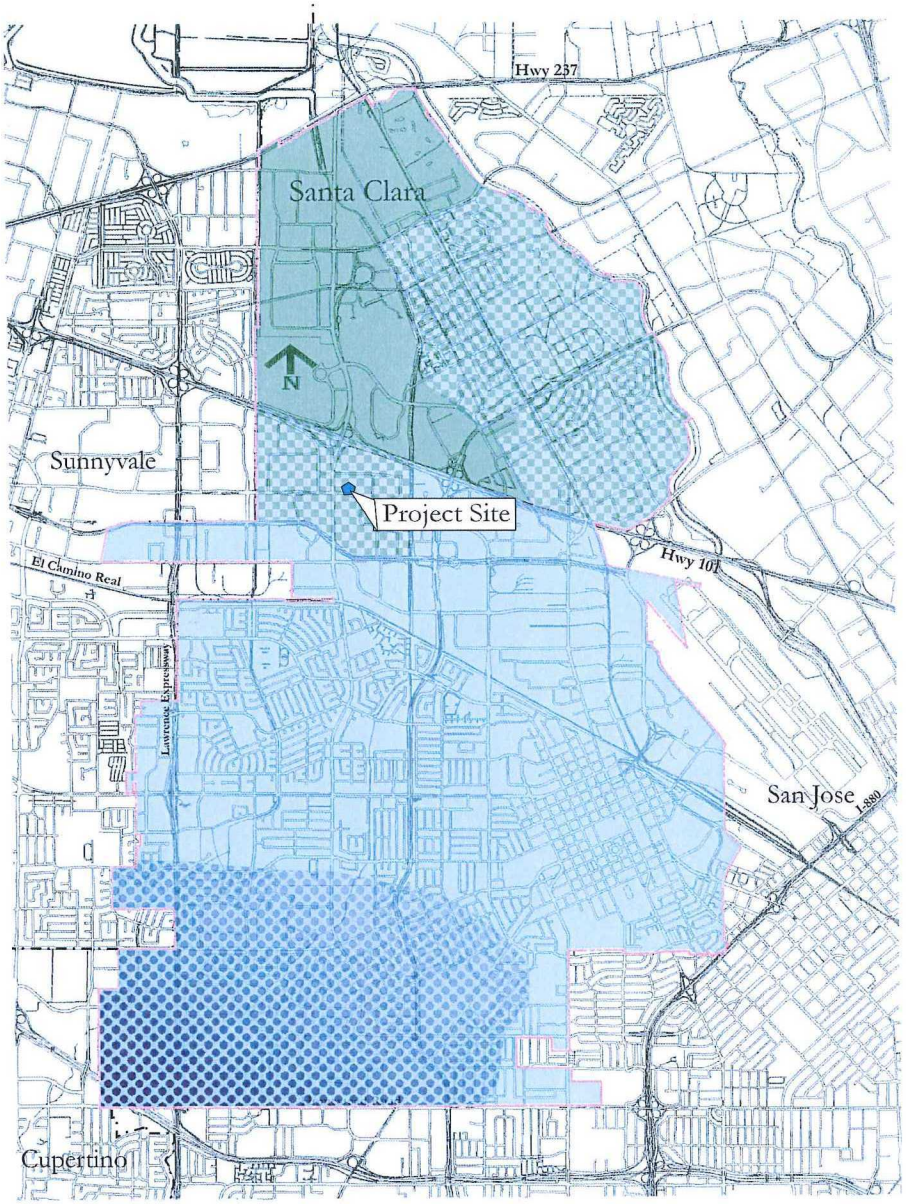


Figure 2 shows the water source by area. As shown in Figure 2, water purchased from SFPUC is used to supply water north of Highway 101. Treated surface water purchased from the SCVWD is used in conjunction with groundwater to supply water to the southern portion of the City. The Project is in an area of Zone I that is mainly served by a blend of SFPUC Hetch Hetchy water and the City's well water supply.

Figure 2

Source of Water by Area



SFPUC Hetch-Hetchy

Blend of SFPUC Hetch Hetchy and Well Water

City of Santa Clara Well Water

A blend of Well Water and SCVWD treated surface water

GROUNDWATER

PROJECTED GROUNDWATER SUPPLY

The City of Santa Clara is supplied by groundwater from the Santa Clara Valley Groundwater Basin. The Santa Clara Valley Groundwater Basin extends from the Coyote Narrows at Metcalf Road in San Jose to Santa Clara County's northern boundary. The basin is bounded on the west and east by the Santa Cruz and Diablo Ranges, respectively. The mountain ranges converge at Coyote Narrows to form a sub basin. The sub basin is 22 miles long and 15 miles wide, at its widest point, and has a 225 mile surface area. District staff estimates that the operational storage capacity of the sub basin is 350,000 acre feet with an estimated maximum annual withdrawal of 200,000 acre feet.[7]

The Santa Clara Valley Groundwater Basin is not adjudicated. The allowable withdrawal or safe yield of groundwater by the City of Santa Clara is dependent on a number of factors, including: withdrawals by other water agencies; the quantity of water recharged to the basin; and the carryover storage (water available for use but not used in prior years) from each previous year. The SCVWD estimates the amount of carryover storage in April of each year and reviews and modifies the basin's groundwater management strategy to avoid subsidence while allowing for groundwater use as needed to meet demand.[8] The most recent evaluation by the California Department of Water Resources indicates that the Santa Clara Valley Groundwater Basin and the Santa Clara Sub-basin are not in overdraft.[9,10]

The City currently operates 27 wells for extracting potable groundwater from the basin. The City's wells are strategically distributed around the City. The exact location of the wells is not included in this document for security reasons. This distribution of wells adds to the reliability of the water system and minimizes the possibility of localized subsidence due to localized over-drafting. The 2010 UWMP contained a detailed analysis of the historic pumping rates and the depth to water at each well. Minor seasonal fluctuations in the depth to water were noted in the analysis but there is no evidence of declining water table or over-drafting.

The City has well capacity that is not currently being used.[11] The water utility analyzes the capacity of the wells by dividing the actual groundwater production by the theoretical groundwater production if all wells were run at their rated capacity. This calculation yields a "utilization factor" which approximates the percentage of time the wells are run or the percentage of the total groundwater production capacity that is utilized. The utilization factor for the City's wells is currently 22% with several wells being used at less than 10% of their rated capacity. The District has not determined a resource limit to the City's use of groundwater; rather it has represented its ability to obtain sufficient quantities of water supply for the overall water requirements as stated in the City's 2010 UWMP. The amount of groundwater pumped over the period from FY1985/86 to FY2011/12 is shown in Figure 3 below.

---

[7] City of Santa Clara 2010 Urban Water Management Plan, page 28

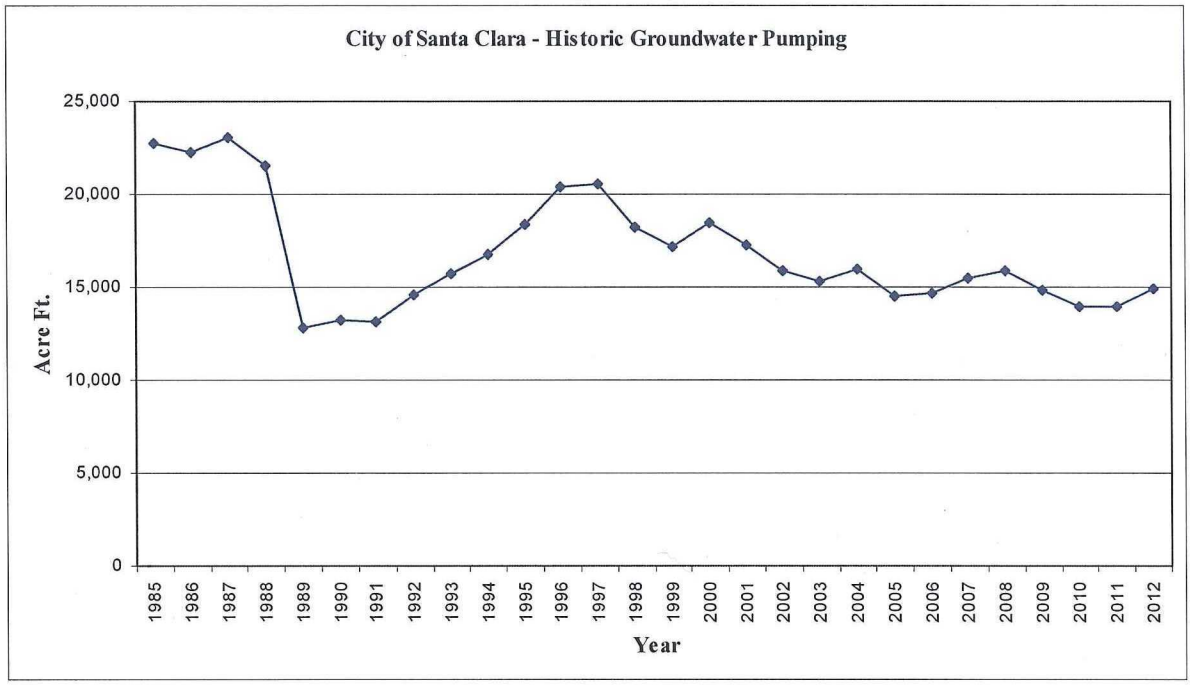
[8] Santa Clara Valley Water District, 2010 Urban Water Management Plan

[9] Department of Water Resources, California's Groundwater Update 2003, DWR Bulletin 118 www.groundwater.water.ca.gov/bulletin118/update2003.

[10] 3515 Monroe Street WSA approved by City Council Resolution #13-8090 on December 3, 2013, Appendix E

[11] City of Santa Clara 2010 Urban Water Management Plan, Appendix G

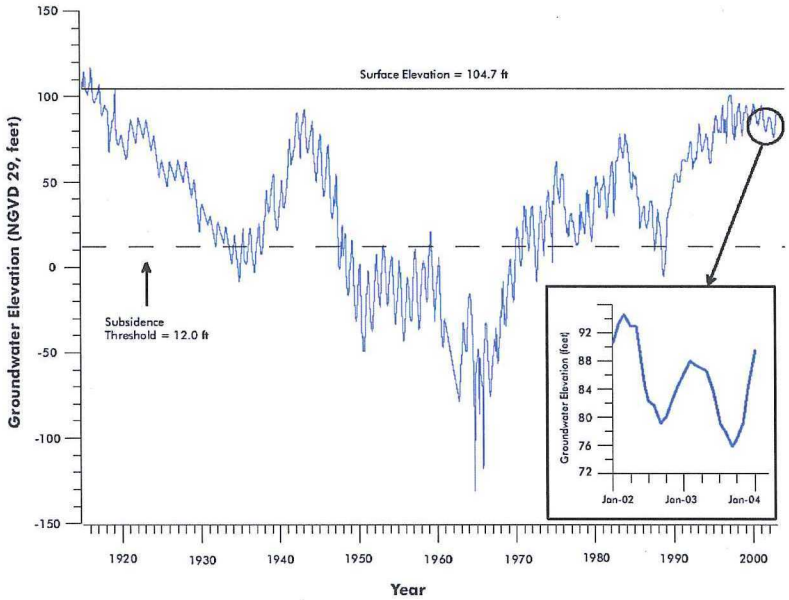
Figure 3



The most recent information from DWR indicates that neither the Santa Clara Valley Basin, nor the Santa Clara Sub Basin, is currently listed as over drafted.[12] As shown in Figure 4 below, even when the City was at the historic peak for groundwater production FY1986/87, the basin was not approaching overdraft.

Figure 4

Hydrograph for Santa Clara Valley Sub Basin Index Well (07S01E07R013)[13]



[12] Department of Water Resources, California's Groundwater Update 2003, DWR Bulletin 118 www.groundwater.water.ca.gov/bulletin118/update2003/

[13] Santa Clara Valley Water District, Groundwater Conditions 2002/2003, January 2005

The 2010 UWMP projects that the City's groundwater use will increase from approximately 13,980 acre-feet per year in 2010 to 20,048 acre-feet per year in 2015 and remain at that level in subsequent years (see Table 1a/b). At the time that the 2010 UWMP was being prepared, groundwater use projections for the Santa Clara Valley Groundwater Basin had not been finalized for water planning purposes by other water providers in the region. This led the City to use each water provider's 2005 groundwater use projections. In 2005, agencies only projected groundwater use through 2030. At that point, in the absence of retailer projections for 2035, a rough projection was made using the average five-year incremental increase in cumulative groundwater demand. As a result, the 2010 UWMP cumulative groundwater demand for all groundwater producers in the basin, using conservative future extraction assumptions, indicate that by 2035, groundwater use could be approximately 166,000 acre-feet per year compared with an estimated withdrawal capacity of approximately 200,000 acre-feet per year.[14]

Groundwater use projections were subsequently finalized in the 2010 UWMPs adopted by other basin users. Table 2 compares the 2010 UWMP estimates with the projected groundwater use identified by each water service provider for 2035.

Table 2
Projected Santa Clara Valley Groundwater Basin Use
2035 (acre-feet per year)

Retailer	City(s) Served by Retailer	Projected Ground Water Use in Santa Clara 2010 UWMP (Table 34)	Projected Ground Water Use in other jurisdictions' 2010 UWMPs
		2035	**2035**
City of Santa Clara	City of Santa Clara	23,048	23,048
San Jose Water Company	Campbell, Cupertino, San Jose, Saratoga, Los Gatos, Monte Sereno	78,522	61,940
San Jose Municipal Water System	San Jose	25,085	15,888
Great Oaks Water Company	San Jose	32,314	9,302
California Water Service Company (Los Altos District)	Cupertino, Los Altos, Los Altos Hills, Mountain View, Sunnyvale	4,447	3,492
City of Mountain View	Mountain View	45	285
City of Sunnyvale	Sunnyvale	2,940	1,000
TOTAL		**166,400**	**114,955**

Sources:
San Jose Water Company 2010 UWMP, page 19 Table 16;
San Jose Municipal Water System 2010 UWMP, page 4-7, Table 4-4;
Great Oaks Water Company 2010 UWMP, page 19 Table 19A;
California Water Service Company (Los Altos Suburban District) 2010 UWMP, page 43, Table 4.1-1;
City of Mountain View 2010 UWMP page 5-22, Table 5-6;
City of Sunnyvale 2010 UWMP, page 4-5, Table 4-4.

Table 2 shows that the actual groundwater use projections are substantially lower than estimated for the water service providers considered in the 2010 UWMP. By 2035, the 2010 UWMP estimates indicate that Santa Clara Valley Groundwater Basin extractions, including the City's use of 23,048 acre-feet per year, will be approximately 114,955 acre-feet per year, or more than 50,000 acre-feet per year lower than estimated in the 2010 UWMP. The projected cumulative 2035 demand level would also be substantially

[14] 2010 UWMP, page 54, Table 34.

below the basin's estimated 200,000 acre-feet per year safe yield. The groundwater demand projections finalized after the City adopted the 2010 UWMP provide further evidence that the City's projected groundwater use would not individually or cumulatively generate adverse effects to local or regional groundwater supplies and aquifer conditions over time.[15]

PROJECTED RECYCLED WATER SUPPLY

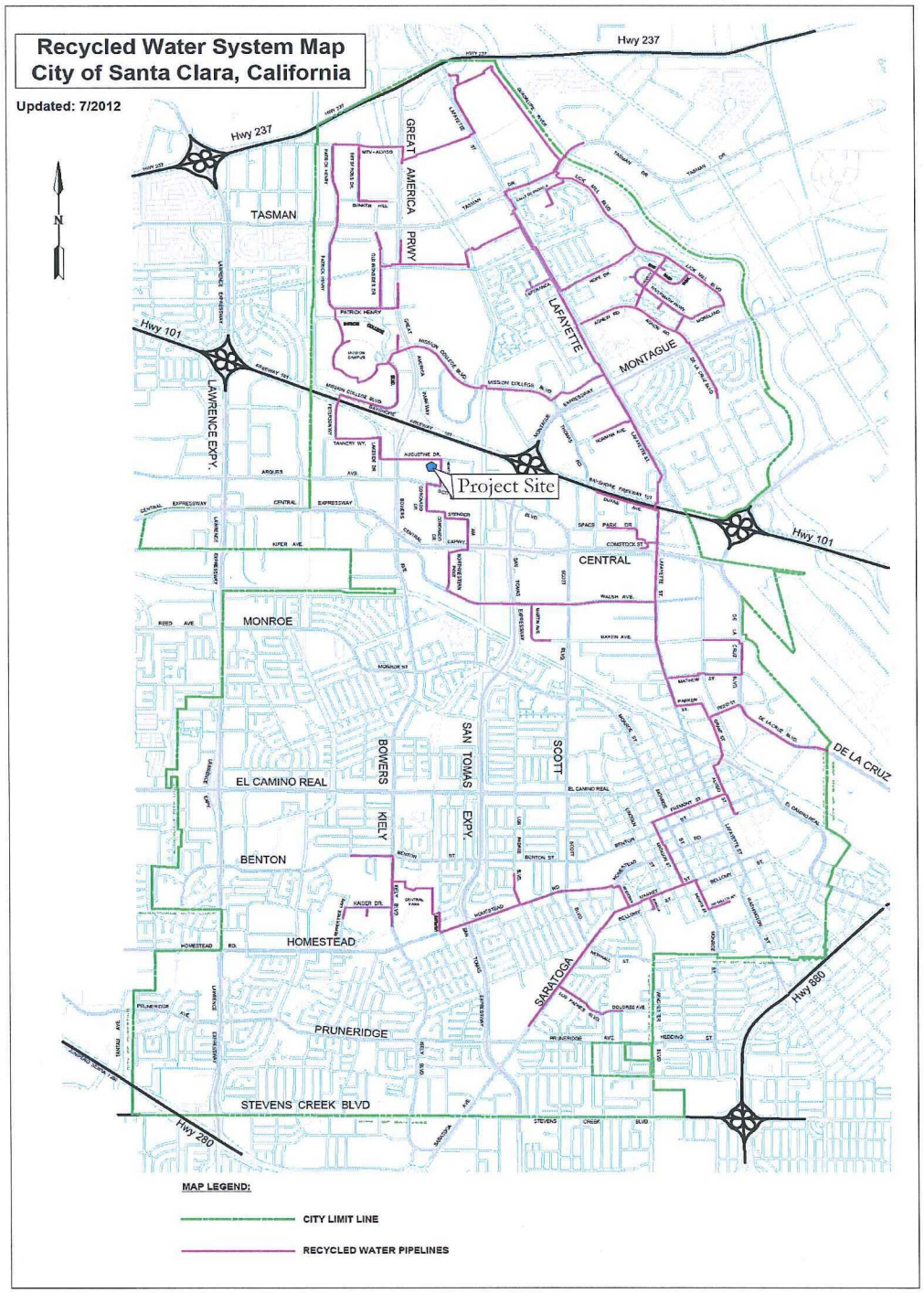
Recycled water is currently available to all but one parcel (2465 Augustine) at the Project site. Recycled water will be used for irrigation wherever available for irrigation use. In the future, the recycled water main may be extended to serve the 2465 Augustine parcel; however, for this analysis irrigation demand for the parcel without current access to recycled water was assumed to be met with potable water (see Appendix D).

The recycled water available in the City is provided by South Bay Water Recycling (SBWR) and meets current regulations of the California Department of Public Health for unrestricted use. This designation allows for the use of recycled water for irrigation and industrial use within specific guidelines. As noted in the 2010 UWMP there is ample capacity within the recycled water system. The San Jose/Santa Clara Water Pollution Control Plant currently produces in excess of 100 million gallons per day of water that meets recycled water standards, however system-wide recycled water sales are approximately 10 million gallons per day. The recycled water distribution system is shown in Figure 5 below.

The recycled water system has operated since 1989 with minimal interruptions in service. SBWR strives to reduce the number of instances, duration, and magnitude of any service interruptions. The use of recycled water at any site is contingent upon the completion of the necessary arrangements in accordance with SBWR, City of Santa Clara and California Department of Public Health rules and regulations regarding the use of recycled water. In addition, payment must be made of applicable fees, rates and charges. These fees/rates and charges may include but are not limited to charges for major facilities described above and delivery charges for the recycled water used.

[15] 3515 Monroe Street WSA approved by City Council Resolution #13-8090 on December 3, 2013, Appendix E

Figure 5


Recycled Water System Map
City of Santa Clara, California
Updated: 7/2012
N
Hwy 237
Hwy 101
Hwy 880
Hwy 280
TASMAN
GREAT AMERICA PRWY
LAFAYETTE
MONTAGUE
LAWRENCE EXPY.
Project Site
CENTRAL
MONROE
EL CAMINO REAL
BOWERS
KIELY
SAN TOMAS EXPY.
SCOTT
DE LA CRUZ
BENTON
HOMESTEAD
SARATOGA
PRUNERIDGE
STEVENS CREEK BLVD
MAP LEGEND:
CITY LIMIT LINE
RECYCLED WATER PIPELINES

The 2010 UWMP projected increases in water demand using an "End Use" model. Two main steps are involved in developing an End Use model: (1) establishing base year water demand at the end-use level (such as toilets, showers) and calibrating the model to initial conditions and (2) forecasting future water demand based on future demands of existing water service accounts and future growth in the number of water service accounts. The calculations assumed that the density of residential housing would increase over the study period and that redevelopment and changes would result in water demand increases in other sectors.

After establishing the base year, the water demand at the end-use is calculated by breaking down total historical water use for each type of water service account (single family, multifamily, commercial, irrigation, etc.) to specific end uses (such as toilets, faucets, showers, industrial processes and irrigation).[16]

The basic methodology of the model is to break down water usage into an average consumption per account type. Projections are made regarding potential reductions in average consumption based on water conservation programs, and natural replacement of less water efficient processes with more efficient processes. These projections were used to adjust the future average consumption per account figures. Projections of the future number of accounts for each user type of the future number of accounts are also calculated, typically based on other technical studies such as Association of Bay Area Governments ("ABAG") Projections or Census data. The projected number of accounts is based on the projected number of housing units for residential or the projected number of jobs in the case of the industrial and commercial categories. Job projections were taken from the ABAG publication, Silicon Valley Projections. Once both the number of accounts and the average consumption per account are calculated, the number of accounts for each future year was multiplied by the average consumption per account for that year to arrive at a total water demand for each user type. The 2010 UWMP projected increases for each user category in five-year increments. The projected increases for each category are contained in Table 3 below.

Table 3
Projected changes in water demand from the 2010 UWMP (acre-feet)

Year	SFD	MFD	Commercial	Industrial	Institutional	Municipal	System Loss	Total
2010-2014	3,097	1,242	(638)	2,218	282	251	1	6,453
2015-2019	481	151	359	369	48	36	50	1,494
2020-2024	360	96	395	390	37	29	45	1,352
2025-2029	381	122	434	415	37	28	49	1,466
2030-2035	481	218	91	452	41	31	48	1,332

The City has recognized that the end use model used to derive the demand projections in both the 2010 UWMP and the 2005 UWMP generates conservative estimates of future water demand. The 2005 UWMP, for example, overestimated the City's actual water use in 2010—the first five-year projection analyzed in the plan—by more than 7,770 acre-feet. The 2005 UWMP also projected that City water use in 2005 would increase by approximately 2,200 acre-feet in 2010. In 2010 the City's actual water use declined by approximately 3,200 acre-feet from 2005.[17]

[16] For purposes of this Assessment, office space is a subset of a commercial end-use.

[17] 3515-3585 Monroe Street WSA approved by City Council Resolution # 11-7836 on March 15, 2011, pages 15-16, Tables 7 and 8.

The 2010 UWMP projections assume that compared to 2010, City water demand will grow by more than 8,000 acre-feet in 2015, a relatively large 35% increase. As shown in Table 4, however, the City's actual water demand since 2010 has not reflected the growth in water consumption assumed in the 2010 UWMP. If future water deliveries follow the same growth rate as in the actual water deliveries for 2010-2012, then by 2015 overall water deliveries will be significantly less than the levels projected in the 2010 UWMP.

Table 4
Actual City Water Deliveries and System Losses
Compared with Projected Water Deliveries, (acre-feet per year)

	2010 (actual)	2011	2012
Actual Water Deliveries	20,806	20,687	21,193
Projected Water Deliveries, 2010 UWMP	20,806	22,097	23,387
Difference	-	(1,410)	(2,194)

Source: 3700 El Camino Real WSA approved by City Council Resolution # 13-8031 on April 23, 2013, Table 7.
Note: Includes water deliveries and system losses reported by the City and excludes recycled water use.

As discussed above, the 2005 UWMP projections overestimated the City's 2010 water use by more than 7,770 acre-feet per year (actual 2010 use of 23,213 acre-feet per year versus projected use of 30,986 acre-feet per year). As shown in Table 5 and Figure 6, however, the end use model used to prepare the 2010 UWMP estimates that City demand will rapidly increase after 2010 and eventually approach the levels projected for 2030 in the 2005 UWMP.

Table 5
Projected Water Demand, 2010-2030
2005 UWMP and 2010 UWMP

	2010	2015	2020	2025	2030
2005 UWMP	30,986	32,559	34,004	35,254	36,337
2010 UWMP	23,213	31,259	33,053	34,605	36,071
Change	(7,773)	(1,300)	(951)	(649)	(266)

Sources: see Table 1; 3515-3585 Monroe Street WSA approved by City Council Resolution # 11-7836 on March 15, 2011, page 15, Table 7.

Table 5 and Figure 6 show that following a large assumed demand increase of more than 8,000 acre-feet per year by 2015, the end use model produces demand estimates in the 2010 UWMP that approximate the demand levels and trends projected the 2005 UWMP. By 2030, the last projection year in the 2005 UWMP, the difference between the projected demand levels in each plan is only 266 acre-feet per year.[18]

[18] 3515 Monroe Street WSA approved by City Council Resolution #13-8090 on December 3, 2013, Appendix E

Figure 6
Projected Water Demand Trendlines
2005 UWMP and 2010 UWMP (acre-feet per year)

Sources: see Table 5.

The 2010 UWMP assumption that the City's demand will eventually approximate the 2005 UWMP projection levels appears to be conservative because the 2005 projections are known to have significantly overstated actual City demand in 2010. As shown in Table 4, actual water demand after the 2010 UWMP was adopted has also been significantly below the rate of growth projected for the 2010-2015 period. Reflecting these results, WSAs prepared and approved by the City since the 2010 UWMP was adopted have concluded that "overall system demand is significantly lower than … projected by the 2010 UWMP" and that "overall, the [City's] water demands are less than projected by the End Use model."[19] Empirical data since 2005 provides substantial evidence that the end use model used to prepare the 2010 UWMP generates conservative projections that are significantly higher than actual City water use over time.[20]

PROJECTED WATER DEMAND FOR THE PROPOSED PROJECT

The total water demand for this Project is calculated to be 360.9 acre ft/yr. Due to the reduction in potable water demand from the use of recycled water for most of the new landscaping on site, the potable water demand for the Project is calculated to be 317.4 acre ft/yr. The calculations for the Project's water demand was determined using project square footage found in Appendix D.

WATER USAGE FOR THE SANTA CLARA SQUARE PROJECT INCLUDED IN THE 2010 UWMP

A WSA for the Project site was previously approved in September 2008, prior to the adoption of the City's 2010 UWMP. The 2008 WSA, which was based on the 2005 UWMP, determined that the Project would require 366.6 acre ft/yr of water. The demand projection from the 2008 WSA was subsequently incorporated into the 2010 UWMP's future demand projection, and a 366.6 acre ft/year demand was assumed in the 2010 UWMP for the Project.

---

[19] *See, e.g.,* (a) the 3700 El Camino Real WSA approved by City Council Resolution # 13-8031 on April 23, 2013, Page 14; (b) the 3000 Bowers Avenue WSA approved by City Council Resolution # 12-7963 on August 28, 2012, page 13; and (c) the 2200 Lawson Lane WSA approved by City Council Resolution #12-7964 on August 28, 2012, page 13.

[20] 3515 Monroe Street WSA approved by City Council Resolution #13-8090 on December 3, 2013, Appendix E

The Project site was sold after the 2008 WSA was prepared and the EIR for the 2009 project was certified by the City in May 2009. In 2014 the original site development plan was modified to reflect the proposed Project, which reduces total development by approximately 4,500 square feet from the approved 2009 project. As currently proposed, the Santa Clara Square Project would utilize 360.9 acre ft/yr, or approximately 5.7 acre ft/yr less than the demand included in the 2008 WSA. The 2008 WSA took into account historic water usage of 84.5 acre ft/yr for the former land use at the Project site, and determined that the 2009 project would increase demand by 282.1 acre ft/year from historical levels. Updated usage information for the site, including the additional 16.8 acres included in the Project, show a combined historical demand of 46.8 acre ft/yr. Compared to that historic usage at the site, the calculated water demand for the Project is a net increase of 314.1 acre ft/yr.

Using updated water use assumptions, and the new, lower level of historic usage information, the projected net increase in water demand for the Project would increase from 282.1 acre ft/yr, as estimated in the 2008 WSA, to 314.1 acre ft/yr. The total water demand for the Project, however, will be lower than the 366.6 acre ft/year level identified in the 2008 WSA and incorporated into the 2010 UWMP. As a result, the Project does not increase demands on City water supplies attributable to the Project and included in the overall 2010 UWMP supply and demand projections. The 2008 WSA also assumed that no recycled water would be available for Project use. Since that time, recycled water distribution has been extended to almost all of the Project parcels and would be available to meet external irrigation demand of approximately 43.5 acre ft/year (see Appendix D). In contrast with the 2008 WSA, the Project's use of recycled water will reduce potable demand to approximately 317.4 acre ft/year. Based on the assumption that 46.8 acre ft/year has historically been used at the site, the Project's net increase over historical potable use is 270.6 acre ft/year, or 11.5 acre ft/year less than the potable water increase identified in the 2008 WSA. As a result, the Project will not increase total water demand and potable water demand above the levels incorporated for the Project into the 2010 UWMP. Nevertheless, to provide a conservative assessment, this WSA will assume that (1) the projected demand for the Project represents an increase of 32 acre ft/yr in contrast with the 2009 project based on the newer historical use data, and (2) that the 2010 UWMP only reflected the incremental 282.1 acre ft/yr of demand assumed in the 2008 WSA rather than the total project demand of 366.6 acre ft/yr for the approved 2009 project.[21]

ESTIMATED HISTORIC WATER USAGE FOR THE SANTA CLARA SQUARE PROJECT

The historic water usage of 84.5 acre ft/yr for the former land use at the original Project site was taken into account in the 2008 WSA. Newer usage information for the original Project site and the additional three parcels added in Project modifications show a combined historical demand of 46.8 acre ft/yr. The 2010 UWMP incorporated the historical and additional 2009 project demand of 366.6 acre ft/yr, and the Project demand will be 360.9 acre ft/yr, lower than the total project demand assumed in the UWMP. To provide a conservative analysis, however, this assessment will address the City's ability to meet an assumed increased water demand of 32 acre ft/yr under the conservative assumptions noted earlier. Based on the calculated water demand for the proposed Project minus the historic usage at the site, the net increase in the total water demand for this Project is calculated to be 314.1 acre ft/yr.

[21] Under the Water Code, the CEQA lead agency must make a final determination regarding the availability of and impacts that could be associated with water supplies for a project. Section 4.11.2.2 of the draft EIR for the 2009 project concluded that "Implementation of the proposed project would result in a *net increase of water use* on-site of 327,500 gallons per day" (emphasis added). In addition, Appendices D and E show that total historical demand since 2005 within the Project, which includes additional developed areas that were not included in the 2008 WSA, was substantially below the 84.5 acre ft/year level assumed in the 2008 WSA, and also below the 46.8 acre ft/year assumed for the additional existing uses in the Project area. As a result, the net potable demand increase for the 2009 project was likely greater than 282.1 acre-feet/yr.

ESTIMATED WATER DEMAND FOR PROPOSED DEVELOPMENT

Water demand for the proposed Project was calculated based on the average daily demand for the 1,862,100 nsf of office space, 138,000 nsf of retail space and the 661,900 square feet of new landscape. The method and data used to arrive at the estimated water demand for the Project are found in Appendix D of this Assessment.

WATER DEMAND TO BE MET BY RECYCLED WATER

Portions of the proposed Project currently have access to recycled water, which will be used to irrigate 503,900 square feet of new landscaping. This results in a 43.5 acre ft/year reduction in potable water demands for the Project. Although recycled water service may be extended to serve the remaining portion of the project site, the 158,000 square feet of new landscaping that does not currently have recycled water service available will be calculated as potable water demand.

SUMMARY OF EXISTING AND ESTIMATED WATER DEMANDS

The complete analysis of the estimated water demands is contained in Appendix D of this Assessment. A summary of the existing and estimated water demands for the Project site are found in Table 6 below.

Table 6
Existing and Estimated Water Demand Per Year for Project Site

	Status	Gal/yr	Acre-ft/yr
Office Space	Proposed	95,153,310.0	292.0
Retail Space	Proposed	3,828,120.0	11.7
Irrigation (Recycled)	Proposed	14,162,109.5	43.5
Irrigation (Potable)	Proposed	4,440,590.0	13.6
Historical Usage for Project Site	Existing	-15,249,845.5	-46.8
Total Demand (increase per year)		102,334,284.0	314.1
Total Demand (increase per year) Included in 2008 WSA (incorporated in the 2010 UWMP)		91,919,887.2	282.1
Change in Total Demand		10414396.8	32.0

PROJECTED WATER DEMAND FOR OTHER PROPOSED PROJECTS

The projected water demand for other development projects that were not specifically considered in the development of the 2010 UWMP were analyzed in conjunction with this Assessment. The complete listing of projects and their associated water demands are contained in Appendix E. Tables 7 and 8 show a summary of the projected water demand changes by user category. If the timeframe for a project to be built spans several years, the earliest possible date was used to calculate the changes in Tables 7 and 8. The use categories of single-family dwelling ("SFD"), multi-family dwelling ("MFD"), commercial, industrial, institutional, and municipal match the use categories used in the development of the 2010 UWMP. The values in Tables 7 and 8 below summarize the projected changes in water demand for each user category and the planning period in which the change is expected to occur. If a proposed project resulted in a change of use, such as a commercial building being converted to single-family residential housing, the existing water demand was subtracted from the corresponding category and the new water

demand was added to the category for the new use. Therefore, in the example cited earlier, the historic water demand for the commercial building would be subtracted from the commercial category and the new demand for the proposed single-family dwellings would be added to the SFD column.

Table 7
Changes in water demand for proposed projects excluding Santa Clara Square (Acre-ft/yr)*

Year	SFD	MFD	Commercial	Industrial	Institutional	Municipal	Total
2010 - 2014	0.0	0.0	720.5*	0.0	0.0	0.0	720.5*
2015 - 2019	158.0	159.6	388.4	0.0	0.0	0.0	706.0
2020 - 2024	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2025 - 2029	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2030 - 2034	0.0	0.0	0.0	0.0	0.0	0.0	0.0

* Updated water demand to reflect the replacement of the original 3333 Scott Blvd. Water Supply Assessment's water demand of 384.4 acre-ft/yr. (Resolution #12-7933). This updated water demand takes into account the historical usage of 9.5 acre-ft/year.

Table 8 below contains the calculated changes in water demand from all the proposed projects listed in Appendix E, including the projected water demand from the Project. The analysis performed was identical to the analysis for Table 7 above. Although the increase in multiple-family demand exceeds the MFD amount in Table 3, the City is still within the water demand projections for all category uses in 2015-2019.

Table 8
Changes in water demand for proposed projects including Santa Clara Square Assuming 32 acre-ft/yr of Project Demand not Included in 2010 UWMP (Acre-ft/yr)*

Year	SFD	MFD	Commercial	Industrial	Institutional	Municipal	Total
2010 - 2014	0.0	0.0	752.5*	0.0	0.0	0.0	752.5*
2015 - 2019	158.0	159.6	388.4	0.0	0.0	0.0	706.0
2020 - 2024	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2025 - 2029	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2030 - 2034	0.0	0.0	0.0	0.0	0.0	0.0	0.0

* Updated water demand to reflect the replacement of the original 3333 Scott Blvd. Water Supply Assessment's water demand of 384.4 acre-ft/yr. (Resolution #12-7933). This updated water demand takes into account the historical usage of 9.5 acre-ft/year.

Water demands for some user categories are higher than was projected by the End Use Model, however, these are offset by other categories of users that have water demands that were lower than projected. The current overall system demand is significantly lower than was projected by the 2010 UWMP. Table 9 shows the projected demands from the 2010 UWMP. Table 10 shows the actual potable water demand for calendar years 2005 through 2013. The recycled water demand for calendar year 2013 was 3,126 acre ft. The 2010 UWMP demonstrated that adequate water supplies exist to meet the demands noted in Table 9 during a normal water year. Overall, the water demands are less than projected by the End Use Model. Therefore, the increase in water demand from the proposed development falls within the total projected water demand increases described in the 2010 UWMP.

Table 9
2010 UWMP Demand Projections by Category

Year	SFD	MFD	Commercial	Industrial	Institutional	Municipal	System Loss	Total
2015	8,603	5,868	4,879	5,150	950	723	1,086	27,259
2020	9,084	6,019	5,238	5,519	998	759	1,136	28,753
2025	9,444	6,115	5,633	5,909	1,035	788	1,181	30,105
2030	9,825	6,237	6,067	6,324	1,072	816	1,230	31,571
2035	10,306	6,455	6,158	6,776	1,113	847	1,278	32,933

Table 10
Actual Potable Water Sales (Acre Ft-yr)

Year	SFD	MFD	Commercial	Industrial	Institutional	Municipal	System Loss	Total
2005	6,346	5,013	6,963	4,972	903	1,207	996	26,400
2006	6,312	5,044	6,924	5,111	902	1,200	1,222	26,715
2007	6,535	5,288	7,310	5,022	1,025	1,396	707	27,283
2008	6,425	5,166	7,012	4,720	955	1,267	718	26,263
2009	5,914	4,771	5,668	3,246	686	536	888	21,709
2010	5,506	4,626	5,517	2,932	668	472	1,085	20,806
2011	5,516	4,658	5,622	2,603	617	482	1,188	20,687
2012	5,843	4,754	5,896	2,460	671	522	1,047	21,193
2013	5,976	4,836	5,886	2,408	709	473	1,387	21,675

SINGLE DRY YEAR

The 2010 UWMP projects that during a single dry year, the City projects no reduction in supplies from groundwater. Per a SCVWD document dated March 16, 2011[22], treated surface water is not expected to be reduced in a single dry year event until 2030, when it could be reduced anywhere from 0-20%. For planning purposes, the 20% worst case scenario will be used in all projections. SFPUC has indicated that during a single critical dry year, SFPUC will reduce their total water supply by 10% from 184 mgd to 152.6 mgd in a single dry year. The City of Santa Clara will receive 1.17% of the 152.6 mgd.[23] Recycled water use and water conservation are projected to remain unchanged or potentially increase due to public awareness, during a critical dry year. The resulting analysis of available supplies is shown in Tables 11a and 11b below. During a single critical dry year, there is no projected shortfall in total available water supplies if the City receives Hetch Hetchy water until 2035. If the City does not receive Hetch Hetchy water, after contract negotiations with SFPUC in 2018, there is a projected water supply shortfall after 2030. However, future water supply projects are expected to provide between 5,000-6,000 acre-feet per year.[24] This additional supply will help to cover any expected shortage until 2030 in a single dry year drought if the City loses the current SFPUC contracted Hetch Hetchy water.

Table 11a
Projected Supply versus Demand Comparison – Single Dry Year (Acre-ft/yr)

Year	2015	2020	2025	2030	2035
Supply Totals	34,313	34,714	34,993	34,135	34,135
Demand Totals	31,259	33,053	34,605	36,071	37,433
Difference as % of Supply	8.9%	4.8%	1.1%	-5.7%	-9.7%
Difference as % of Demand	9.8%	5.0%	1.1%	-5.4%	-8.8%

Table 11b
Projected Supply versus Demand Comparison – Single Dry Year Without SFPUC Supply (Acre-ft/yr)

Year	2015	2020	2025	2030	2035
Supply Totals	34,313	32,713	32,992	29,392	29,392
Demand Totals	31,259	33,053	34,605	36,071	37,433
Difference as % of Supply	8.9%	-1.0%	-4.9%	-22.7%	-27.4%
Difference as % of Demand	9.8%	-1.0%	-4.7%	-18.5%	-21.5%

MULTIPLE DRY YEAR

During a multiple dry year event, the City projects no reduction in supplies from groundwater. Per a SCVWD document dated March 16, 2011[25], treated surface water is not expected to be reduced in a multiple dry year event until 2025, when it could be reduced anywhere from 0-20%. For planning purposes, the 20% worst case scenario will be used in all projections. SFPUC has indicated that during multiple critical dry years the City can expect a maximum reduction of SFPUC water supplies of 43% of normal.[26] SFPUC has indicated that in the second and third year of a drought, they will reduce their

[22] City of Santa Clara 2010 Urban Water Management Plan, Appendix H
[23] City of Santa Clara 2010 Urban Water Management Plan, Appendix I
[24] City of Santa Clara 2010 Urban Water Management Plan, page 46
[25] City of Santa Clara 2010 Urban Water Management Plan, Appendix H
[26] City of Santa Clara 2010 Urban Water Management Plan, Appendix I

water supply by 20% from 184 mgd to 132.5 mgd. For SFPUC supplies, Table 12a assumes a worst-case scenario based on a replication of the 1987-1992 multiple dry year event. The City of Santa Clara will still receive 1.17% of 132.5 mgd.[27] Table 11b assumes that SFPUC water is unavailable after 2018.

Recycled water use is projected to remain unchanged during a multiple dry year event. The City also assumes no change in water conservation when projecting demands for multiple dry year events for conservative projecting purposes. The resulting analysis of all available supplies is shown in Table 12a and 12b below. During a multiple critical dry year event, there is a projected shortfall in available water supplies independent of whether the City receives or does not receive Hetch Hetchy water after contract negotiations with SFPUC in 2018. However, future water supply projects are expected to provide between 5,000-6,000 acre-feet per year.[28] This additional supply will help to cover any expected shortage until 2030 in the third year of a multi-year drought if the City loses the current SFPUC contracted Hetch Hetchy water.

Table 12a
Supply and Demand Comparison – Multiple Dry-Year Events
(assumes SFPUC supply exists beyond 2018)

		2015	2020	2025	2030	2035
Multiple-dry year *first* year supply	Supply totals	37,352	37,753	38,032	35,088	35,088
	Demand totals	31,259	33,053	34,605	36,071	37,433
	Difference	6,093	4,700	3,427	(983)	(2,345)
	Difference as % of Supply	16.3%	12.4%	9.0%	-2.8%	-6.7%
	Difference as % of Demand	19.5%	14.2%	9.9%	-2.7%	-6.3%
Multiple-dry year *second* year supply	Supply totals	37,352	37,753	38,032	35,088	35,088
	Demand totals	32,726	34,734	36,371	37,949	37,949
	Difference	4,626	3,019	1,661	(2,861)	(2,861)
	Difference as % of Supply	12.4%	8.0%	4.4%	-8.2%	-8.2%
	Difference as % of Demand	14.1%	8.7%	4.6%	-7.5%	-7.5%
Multiple-dry year *third* year supply	Supply totals	37,352	37,753	38,032	35,088	35,088
	Demand totals	33,163	35,064	36,674	38,210	38,210
	Difference	4,189	2,689	1,358	(3,122)	(3,122)
	Difference as % of Supply	11.2%	7.1%	3.6%	-8.9%	-8.9%
	Difference as % of Demand	12.6%	7.7%	3.7%	-8.2%	-8.2%

[27] City of Santa Clara 2010 Urban Water Management Plan, Appendix L

[28] City of Santa Clara 2010 Urban Water Management Plan, page 46

Table 12b

Supply and Demand Comparison – Multiple Dry-Year Events(assumes SFPUC supply does not exist beyond 2018)

		2015	2020	2025	2030	2035
Multiple-dry year *first* year supply	Supply totals	37,352	32,713	32,992	33,048	33,048
	Demand totals	31,259	33,053	34,605	36,071	37,433
	Difference	6,093	(340)	(1,613)	(3,023)	(4,385)
	Difference as % of Supply	16.3%	-1.0%	-4.9%	-9.1%	-13.3%
	Difference as % of Demand	19.5%	-1.0%	-4.7%	-8.4%	-11.7%
Multiple-dry year *second* year supply	Supply totals	37,352	32,713	32,992	33,048	33,048
	Demand totals	32,726	34,734	36,371	37,949	37,949
	Difference	4,626	(2,021)	(3,379)	(4,901)	(4,901)
	Difference as % of Supply	12.4%	-6.2%	-10.2%	-14.8%	-14.8%
	Difference as % of Demand	14.1%	-5.8%	-9.3%	-12.9%	-12.9%
Multiple-dry year *third* year supply	Supply totals	37,352	32,713	32,992	33,048	33,048
	Demand totals	33,163	35,064	36,674	38,210	38,210
	Difference	4,189	(2,351)	(3,682)	(5,162)	(5,162)
	Difference as % of Supply	11.2%	-7.2%	-11.2%	-15.6%	-15.6%
	Difference as % of Demand	12.6%	-6.7%	-10.0%	-13.5%	-13.5%

Even in this worst case scenario, the projected shortfall in available water supply is minimal and well within the margin of error related to the projections and is therefore negligible. The tables above assume no increase in conservation or recycled water use, and also include conservatively overstated future water demands from the 2005 UWMP end use model. The City's actual water use has remained below the levels indicated in the 2010 UWMP using the same methodology.

The projections also assume that conservation savings assumed for normal years will not change during drier hydrological periods. The 2010 UWMP explains the City's legal authority to implement additional voluntary and mandatory conservation measures (e.g., drought curtailment of outdoor irrigation activities) that would significantly reduce water use during a single dry year, multiple dry years or in response to other supply shortfalls. The 2010 UWMP notes, for example, that the projections "…yield a conservative estimate since during a critical multiple dry year event, mandatory conservation measures and increased recycled water usage would be expected to reduce potable water demand"[29]. The 2010 UWMP identifies specific, mandatory water use prohibitions and enforcement mechanisms that the City will implement to reduce water demand as necessary to address water supply limitations in the future.

[29] City of Santa Clara 2010 Urban Water Management Plan, page 84

Table 13

Water Saving Procedures to be Undertaken by the City During Dry Year and Major Supply Interruptions

Plan	Plan 1	Plan 2	Plan 3	Plan 4
Drought Stage	**Advisory**	**Voluntary**	**Mandatory**	**Emergency Curtailment**
Reduction	**Up to 10%**	**10% to 20%**	**21 to 49%**	**50% or greater**
1. Water Use Reduction Target				
a) Single family	NA	80% -90% of base year	50% -80% of base year	50% of base year
b) Master metered multi- family	NA	80% -90%of base year	50% -80% of base year	50% of base year
c) Non-residential	NA	80% -90%of base year	50% -80% of base year	50% of base year
2. Water Use Restrictions				
a) Water waste by irrigation	Prohibited	Prohibited	Prohibited	Prohibited
b) Cleaning sidewalks, hard surfaces, etc.	Prohibited	Prohibited	Prohibited	Prohibited
c) Washing vehicle w/o shut off valve on hose	Prohibited	Prohibited	Prohibited	Prohibited
d) Decorative fountains, operating maintaining	No restriction	Prohibited	Prohibited	Prohibited
e) Water for construction purposes	No restriction	Restricted (1)	Restricted (1)	Restricted (1)
f) Water waste due to effective plumbing / leaks	Prohibited	Prohibited	Prohibited	Prohibited
g) Landscape irrigation	No restriction	Prohibited from 9AM to 6PM	Prohibited from 9AM to 6PM	Prohibited
h) Restaurant water service unless patron requests	No restriction	Prohibited	Prohibited	Prohibited
i) New swimming pool or pond construction	No restriction	Restricted	Restricted	Prohibited
j) Filling or refilling swimming pools	No restriction	Restricted	Restricted	Prohibited
k) Hydrant flushing, except for health and safety	No restriction	Prohibited	Prohibited	Prohibited
l) New irrigation connections for new planting	No restriction	Restricted (2)	Restricted (2)	Prohibited (2)
m) Irrigation of golf courses except greens and tees	No restriction	No restriction	Restricted (1)	Restricted (1)
3. Enforcement				
a) First violation	Warning	Warning	Warning, Citation, up to $500 fine	Warning, Citation, up to $500 fine
b) Second violation	Warning	Warning	Warning, Citation, $100 to $1,000 fine	Warning, Citation, $100 to $1,000 fine
c) Subsequent violations	Warning, citation, $100 to $1,000 fine, flow restrictor	Warning, citation, $100 to $1,000 fine, flow restrictor	Warning, citation, $100 to $1,000 fine, flow restrictor, termination of service	Warning, citation, $100 to $1,000 fine, flow restrictor, termination of service
d) Restrictor removal charge	$50	$50	$50	$50
e) Second restrictor removal charge	$100	$100	$100	Remains for duration
(1) Recycled water only can be used; (2) New landscaping supplied by recycled water allowed without restriction.				

Source: 2010 UWMP, page 72, Table 37.

Table 13 shows that the City can feasibly implement and enforce mandatory water use reduction measures that would reduce water demand by more than 50% from normal levels. The largest potential shortfall projected in the 2010 UWMP is approximately 21.5% of demand in a single dry year, without SFPUC supplies, in 2035 (see Table 11b). As shown in Table 13, the City anticipates that demand could be reduced by 20%, the approximate magnitude of the maximum projected shortfall in the 2010 UWMP, by implementing the advisory and voluntary measures included in water use management plans 1-2. If necessary, Table 10 also shows that the City has the capacity to mandate additional demand reductions of 21%-49% under plan 3, and greater than 50% by implementing the measures included in water use management plan 4. These reduction levels would substantially exceed the maximum projected shortfalls in the 2010 UWMP. The 2010 UWMP projections, however, conservatively assume that none of the demand management measures identified in Table 13 would be implemented during potential shortfall periods. As a result, the projections conservatively overstate the level of City water demand that would be expected to occur during dry years, multiple dry years or other periods of reduced water supply when these measures would be in effect.

The 2010 UWMP identifies several additional conservation programs that the City is implementing or expects to implement in the future. Although the 2010 UWMP reflects conservation savings from some of these measures (see Table 1a, 1b), the projections do not fully account for additional demand reductions, especially during drier periods. The conservation measures identified in the 2010 UWMP include the following:

(a) General Plan policies that focus on producing a reliable, safe potable water supply, promote water conservation, expand recycled water use, and facilitate water supply coordination with the SCVWD[30];

(b) City water supply management measures that increase reliability and reduce potential vulnerability to physical impacts, such as locating wells over a geographically distributed area and maintaining standby power supplies to operate water system facilities during emergencies[31];

(c) The adoption of City ordinances prohibiting wasteful water use[32];

(d) Authority to implement and enforce an outdoor watering schedule that would reduce the frequency and volume of external water use during drier periods[33];

(e) Tracking water consumption for City accounts in a manner that allows for email or other expedited communication regarding water use reduction requirements if necessary to address shortfalls[34];

(f) Providing technical assistance (e.g., water audits) to help reduce water use by high consumption accounts[35];

(g) Providing low-water use landscaping assistance for single family water consumers and for larger landscapes[36];

(h) Offering rebates with the SCVWD for high efficiency clothes washers[37];

---

[30] City of Santa Clara 2010 Urban Water Management Plan, pages 64-65 Table 36
[31] City of Santa Clara 2010 Urban Water Management Plan, pages 65-70
[32] City of Santa Clara 2010 Urban Water Management Plan, pages 65-71
[33] City of Santa Clara 2010 Urban Water Management Plan, page 71
[34] City of Santa Clara 2010 Urban Water Management Plan, page 78
[35] City of Santa Clara 2010 Urban Water Management Plan, page 87
[36] City of Santa Clara 2010 Urban Water Management Plan, pages 88, 90-91

(i) Commercial and industrial water conservation technical assistance, including audits, pre-rinse retrofits for food service businesses, and water efficiency rebates[38];

(j) Conservation and recycled water use incentive pricing[39];

(k) A high efficiency toilet retrofit rebate program administered by the SCVWD[40]; and

(l) Adoption of a landscaping water conservation ordinance in January, 2011 to reduce water use associated with external irrigation[41].

The 2010 UWMP demand projections do not consider the effects of the City's demand management authority and conservation programs beyond normal year conservation estimates. As a result, the projections overstate the City's demand in general and particularly during drier years when the City would act to reduce demand in response to potential supply shortfalls.[42]

CONCLUSION

The proposed demolition of the existing buildings and construction of the 1,862,100 nsf of office space, 138,000 nsf of retail space, and 661,900 square feet of new landscape located at 2455-2727 Augustine and 3333 Bowers is projected to require 360.9 acre ft/yr of total water use, 317.4 acre ft/yr of potable water demand due to 43.5 acre ft/yr of recycled water use for irrigation, an increase in total water demand within the City by 314.1 acre ft/yr from historical use on the Project site, and an increase in potable demand of 270.6 acre ft/yr above historical levels on the site. The previously approved 2008 WSA for the site projected a total demand of 366.6 acre ft/yr for the Project, and a 282.1 acre ft/yr above historical levels on the site. The Project will not increase total or net potable demand above the levels assumed for the 2009 project and incorporated into the 2010 UWMP. To provide a conservative analysis, this WSA further analyzed the City's ability to meet Project demand assuming, as discussed above, that the Project would use 32.0 acre ft/yr of potable water above the levels incorporated for the site in the 2010 UWMP. The analysis shows that, even under these conservative assumptions, a 32 acre ft/yr water demand increase from this Project is consistent with the growth projections in the 2010 UWMP. The City's 2010 UWMP concluded that sufficient water supplies exist to meet the projected demand. This Assessment also analyzed the impacts of changes in contractual limitations on water supply, development projects, and other additional factors that have occurred since the original 2010 UWMP was developed. Therefore, based on the analysis contained in this Assessment, the City of Santa Clara Water Utility has determined that there are sufficient water supplies to provide service to the proposed project at 2455-2727 Augustine and 3333 Bowers.

[37] City of Santa Clara 2010 Urban Water Management Plan, pages 91-92
[38] City of Santa Clara 2010 Urban Water Management Plan, pages 92-94
[39] City of Santa Clara 2010 Urban Water Management Plan, page 94-96
[40] City of Santa Clara 2010 Urban Water Management Plan, pages 97-98
[41] City of Santa Clara 2010 Urban Water Management Plan, Appendix M
[42] 3515 Monroe Street WSA approved by City Council Resolution #13-8090 on December 3, 2013, Appendix E

APPENDIX A

SCVWD Contract

CONTRACT BETWEEN SANTA CLARA VALLEY WATER DISTRICT AND CITY OF SANTA CLARA FOR A SUPPLY OF TREATED WATER

THIS CONTRACT is made and entered into on January 27, 1981, between the SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as "District", and CITY OF SANTA CLARA, hereinafter referred to as "Contractor" and supersedes previous water service contracts between District and Contractor.

RECITALS:

A. District has executed contracts with the State of California Department of Water Resources and the United States Bureau of Reclamation, whereby District is and will be entitled to receive imported water and District intends to continue construction of a system within the boundaries of District to distribute water so received.

B. Included within said system are facilities to treat and filter such water; and Contractor is desirous of obtaining a supply of treated water from District.

AGREEMENT: For and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE A. INTRODUCTORY PROVISIONS

1. Definitions - When used in this contract, the following terms shall have the meanings hereinafter set forth:

a) "Fiscal Year" shall mean each 12-month period during the term hereof commencing July 1 of one year and terminating June 30 of the next succeeding year, both dates inclusive.

b) "Each Contractor", or "Other Contractor", shall mean any entity, public or private, contracting with District for a supply of treated water.

c) The "Act" shall mean the Santa Clara Valley Water District Act, as amended.

d) "Board" shall mean the Board of Directors of the Santa Clara Valley Water District.

2. Term of Contract

a) This contract shall become effective on the date first above written and shall remain in effect for a period of 70 years or until all loans and all bonds, the proceeds of sale of which have been used for the construction of water treatment and distribution facilities have been retired, whichever period shall be longer, provided, however, that in no event shall the term of this contract be deemed to extend beyond the period authorized by law.

b) The term of this contract may be extended for an additional term of years upon such terms and conditions as may be set forth in a written agreement of the parties hereto executed at least eighteen (18) months prior to expiration of the terms specified in the preceding Subsection 2a. If no such agreement shall be so executed, this contract shall terminate as specified in said Subsection 2a unless at least one year prior to said termination date Contractor shall notify District in writing that Contractor desires to extend the term hereof; in such event, said term shall be extended for an addtional period of five years upon the covenants, agreements and conditions herein contained.

3. Successors and Assigns - Subject to the provisions of the succeeding Section 4 hereof, this contract and all the terms, covenants, agreements and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

4. Assignment - No assignment or transfer by Contractor of this contract or any part hereof, or of any rights hereunder or interest herein of Contractor, shall be valid unless approved by District, which approval District agrees shall not be unreasonably withheld. The foregoing provisions of this Section 4 to the contrary notwithstanding, no consent shall be required on an assignment to a Public Agency with the power of eminent domain; provided, such Public Agency expressly assumes the obligations of this contract and provided, further, that if said Public Agency assumes only a portion of the obligations of this contract, Contractor shall remain obligated for the remainder, or in the event Contractor shall sell, transfer, or convey any part or parts or its water system to any entity, public or private, Contractor may assign to the purchaser thereof a portion of Contractor's rights, privileges and obligations hereunder and, in the event of any such assignment Contractor shall be relieved of such portion of such obligations of Contractor so assigned if, following such sale, transfer or conveyance, District shall commence to furnish treated water to such entity, or District under a contract with such entity existing prior to such sale, transfer or conveyance increases the amount of treated water delivered to such entity in order to meet in part the increased water requirements of such entity resulting from such sale, transfer or conveyance.

5. Adjustment of Schedule Purchases upon Other Water Service to Projected Service Area - Where Contractor has prepared and submitted a proposed water delivery schedule to District for an ensuing three-year period in accordance with Article B hereof in reasonable anticipation of and reliance upon projected water service by Contractor to its existing or future customers who receive or would receive service within a service area which shall be defined and may be amended from time to time by Contractor and attached hereto, as Exhibit A, and the schedule has been approved and made binding upon Contractor in accordance with Article B hereof, and where, in lieu of Contractor, any agency, public or private shall thereafter provide treated water service to any such customers and the existence of such circumstance and the necessity of Contractor to reduce its delivery schedule being shown to District and acknowledged by District to be facts (such acknowledgment to be in no case unreasonably withheld), then Contractor's said delivery schedule shall at its option be amended promptly in such manner as to reduce Contractor's scheduled water purchases from District hereunder by an amount fairly commensurate with such reduction of Contractor's anticipated or projected water service.

ARTICLE B. WATER SERVICE PROVISIONS

1. Water Delivery Schedules

a) On October 15, 1980, and every three years thereafter, Contractor shall submit in writing a proposed delivery schedule for the ensuing three-year period beginning July 1 of the following year. The proposed delivery schedule shall be submitted on a form provided by the District and shall indicate the amounts of treated water desired by Contractor during each year of the ensuing three-year period. Except as provided in Subsection c of this section, Contractor agrees that in submitting a proposed water delivery schedule it will not request an amount of water for each year which shall be less in total than 95 percent of the amount for the fiscal year containing the maximum amount in the then current three-year schedule unless Contractor shall have assigned or agreed to assign a portion of its rights, privileges, and obligations hereunder pursuant to the provisions of Article A, Section 4, hereof and i) District has consented to such assignment, or ii) Contractor otherwise shall have been relieved of a portion of its obligations hereunder pursuant to the provisions of said Article A, Section 4; that following occurrence of either event specified in the preceding clauses i) and ii), the foregoing provisions of this Subsection a) shall apply only to the unassigned portion of the Contractor's rights and obligations hereunder.

b) Upon receipt of such delivery schedule, District shall review same, and after consultation with Contractor and Other Contractors receiving treated water from District, shall approve such schedule or make such reductions therein as are consistent with District's ability to deliver water to Contractor and Other Contractors; provided, however, that subject to availability of funds, financing policies, construction schedules, and operating schedules, District will make every reasonable effort to approve each proposed delivery schedule submitted by Contractor and Other Contractors. Except as provided in Subsection c of this section, District agrees that it will approve a delivery schedule for said ensuing schedule period which will not be less in total amount for each fiscal year of said schedule period than 95 percent of the maximum fiscal year set forth in the then current schedule period.

c) Notwithstanding the provisions of Subsections a and b of this section, either Contractor or District may request that the minimum amount of water for each fiscal year in the ensuing three-year schedule period be reduced to a lesser minimum amount than prescribed in Subsections a and b. Upon written agreement by both Contractor and District, based on a showing of extraordinary circumstances, the delivery schedule may be approved at such lesser amount.

d) The approved delivery schedule shall be transmitted to Contractor prior to December 31 of the year in which the proposed delivery schedule is submitted. The approved delivery schedule for fiscal years 1976-77 through 1980-81 is set forth in Exhibit B, attached hereto and by this reference made a part hereof.

e) For operating and planning purposes, Contractor shall, on forms provided by District, annually supply District with Contractor's anticipated monthly delivery schedules for the ensuing year and such information reasonably needed by District to determine projected annual deliveries for the next ensuing five years. Contractor's anticipated monthly delivery schedules shall not constitute a committment by Contractor to receive the amounts of water set forth therein but shall establish the monthly schedule amounts of treated water to be delivered to Contractor for certain purposes under Article C hereof.

2. Amounts of Water - Rates of Flow

(a) District agrees to deliver to Contractor during each fiscal year or fractional fiscal year of this Contract, as the case may be, the amounts of treated water set forth on the approved delivery schedule for each year or fractional fiscal year, as the case may be.

(b) District agrees to deliver to Contractor on demand in any month during the term of this contract at least 15 percent of the total amount of treated water which District has theretofore agreed to deliver to Contractor during the applicable fiscal year as shown on the approved delivery schedule.

(c) District further agrees to provide facilities capable of delivering and will deliver the amounts of water prescribed by Subsections a and b of this section on demand of Contractor at rates of flow up to an instantaneous maximum flow rate equivalent to 205 percent of the then current annual volume shown on the approved delivery schedule expressed as an equivalent uniform flow rate over the full year for an aggregate of 72 hours in any month and for such additional hours in any month as District has the capability to deliver at said rate, provided that District, at such times during the remainder of such month when District does not have the capability to deliver at said rate, may reduce such rate to an instantaneous maximum flow rate not to exceed 180 percent of said annual volume expressed as an equivalent uniform flow rate over the full year.

d) Notwithstanding the foregoing, during the period July 1, 1979 to June 30, 1990, District may limit the maximum flow rate for each Contractor to 180 percent of the then current annual volume of that Contractor shown on the approved water delivery schedule expressed as an equivalent uniform rate over the full year. District will give Contractor reasonable prior notice of any such proposed limit of maximum flow rate.

3. Delivery Structures

a) Water delivered to Contractor pursuant to this contract shall be provided from District facilities through delivery structures to be located at such locations as may be mutually agreed upon. Such delivery structures shall be designed and constructed or caused to be constructed by District. Design and bid costs shall be subject to favorable review and approval by the Contractor prior to award of

construction contract for the delivery structure. District shall pay for the cost of the land, automated controls and reporting systems, nozzle turnout and shutoff valve portion of each of said structures, and Contractor shall pay the total cost of acquiring and installing the measuring devices, the vault or housing and the flow regulating devices, if any, of each of said structures as said devices and facilities are shown on Exhibit C attached hereto and by this reference made a part hereof. Upon thirty (30) days' written notice by District, Contractor shall deposit with District prior to such acquisition and installation an amount of money estimated by District to be sufficient to cover such cost to be borne by Contractor. In the event such estimate proves to be low, Contractor shall pay to District upon written demand therefor the difference between District's estimate and the actual cost to be borne by Contractor. In the event such estimate proves to be high, District shall refund to Contractor promptly the difference between the actual cost to be so borne by Contractor and the amount of said deposit.

b) Title to all delivery structures and to all appurtenances up to and including the control valve shall be in District and Contractor shall have no obligations or responsibilities with respect thereto and shall be under no obligation to operate, maintain, repair, replace or relocate the same.

4. Measurement of Water Deliveried - District shall measure all water delivered to Contractor and shall keep and maintain accurate and complete records thereof. For such purpose, District shall install, operate and maintain at all delivery structures such measuring devices and equipment as are satisfactory and acceptable to both parties.

5. Curtailment of Delivery During Maintenance Periods - District will make all reasonable effort to provide continuous service to Contractor but may temporarily discontinue or reduce the delivery of water to Contractor for the purpose of necessary investigation, inspection, maintenance, repair or replacement of any of the facilities necessary for the delivery of treated water to Contractor. District shall notify Contractor as far in advance as possible of any discontinuance or reduction and the estimated duration of such discontinuance or reduction. Recognizing that Contractor will rely on District for uninterrupted deliveries of water particularly during the high water consumption months each year, District agrees to use its best efforts throughout the term of this contract to make any such discontinuance or reduction in the delivery of water only during the period of November through March in any fiscal year. In the event of any discontinuance of or reduction in delivery of water, Contractor may elect to receive the amount of water which otherwise would have been delivered to it during such period under the approved water delivery schedule for that fiscal year at other times during such year, consistent with District's delivery ability considering the then current delivery schedules of all Other Contractors.

6. Suspension of Service Upon Default - In the event of any default by Contractor in the payment of any money required to be paid to District hereunder, District may, upon not less than three months' written notice to Contractor, suspend deliveries of water under this contract for so long as such default shall continue, provided, however, that during such period Contractor shall remain obligated to make all payments required under this contract and provided, further, that such delinquent amount shall accrue interest at the rate of one-half of one percent per month commencing on the

due date of such delinquent amount and continuing until both the principal amount of such charges and the interest thereon are paid in full. Such suspension of delivery taken pursuant to this Section 6 shall not deprive District of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract. In the event of any disagreement between Contractor and District as to the amount of any bill rendered to Contractor by District, water service shall not be discontinued if the disputed amount thereof is placed on deposit with District. Such deposit shall not preclude review and adjustment of any water bill as set forth in Article C, Section 8, hereof.

7. Water Quality - District agrees that all water to be delivered by it to Contractor pursuant to the terms of this contract will be pure, palatable, wholesome, potable and healthful and that all such water will be of such quality that the same may be used for domestic purposes at the points of delivery thereof to Contractor without further treatment. District understands that Contractor is a public utility furnishing water to its customers for domestic purposes and that water to be delivered by it to Contractor hereunder will be delivered by Contractor to said customers. District agrees that its system shall be constructed and operated during the term hereof in accordance with a permit or permits, including temporary permits, to be issued by the State Department of Health Services, copies of which will be furnished to Contractor upon receipt by District. District agrees that the treated water to be delivered to Contractor pursuant to this contract shall conform to the quality requirements set forth in the then current primary and secondary standards for domestic water quality and monitoring regulations adopted by the California State Department of Health. Should the need arise, District and Contractor will cooperate fully in adjusting their respective processes to the extent reasonably practicable, and provided such adjustments do not affect other Contractors, to aid the Contractor in conforming to such law within the Contractor's distribution system.

ARTICLE C. PAYMENT PROVISIONS

1. The payments to be made by Contractor and Each Contractor for delivery of treated water shall be a price per acre-foot based upon the pricing policy adopted by the Board, dated January 18, 1971, as from time to time amended, which is set forth in Exhibit D, attached hereto and by this reference made a part hereof, and shall be the total of the basic water charges and treated water surcharge as determined by the District Board for each period for which a rate schedule is effective.

2. In determining the above charges, the basic water charge shall be equal to District's groundwater charge for water other than agricultural water (said words "agricultural water" being defined in the Act) in Zone W-2, which shall be determined annually by the Board in accordance with the legal provisions and requirements of the Act; provided, however, that during each rate period the District will consider all anticipated costs for each such rate period and will endeavor to establish during the first year of such rate period a groundwater charge that is intended to remain constant for the full rate period.

3. District shall charge for the delivery of treated water in accordance with the rate schedule for water service as such rate schedule is established by the Board. The Board of Directors shall review said rate schedule every three years to determine whether the schedule is in accordance with the most recent and anticipated costs and revenues of District. Accordingly, the Board shall, on or about the second Tuesday in March 1981, but not later than April 15, 1981, establish a rate schedule for the rate period commencing July 1, 1981 through June 30, 1984, and shall follow said procedure

for each ensuing three-year period. Each such rate schedule shall be prospective in operation, but shall provide for the recovery of expenditures to be recovered by the basic water charge and the treated water surcharge during the period said rates are in effect and any shortages of revenue for said expenditures that may have been experienced during the preceding rate periods. It is agreed that the rates to be so established shall not be unreasonable or arbitrary, shall be based upon reasonable estimates of costs and water deliveries and shall be the same for Contractor and Other Contractors and all other persons, public or private, purchasing treated water from District, regardless of the point of delivery of such water by District; District agrees to use its best efforts throughout the term of this contract to collect from Other Contractors, and such other persons in accordance with such rate schedules, the appropriate sums of money without deduction or offset according to the respective amounts of treated water delivered by the District.

4. Contractor shall pay District the rate or rates set forth on the rate schedules during the period said rate schedules are effective for all water delivered to the Contractor; provided, however, that Contractor shall pay District at least a minimum charge each year applicable to water scheduled to be delivered in such year, which minimum charge shall be based upon an amount of treated water equal to 90 percent of the total amount of treated water to be delivered to Contractor during that fiscal year as shown on the approved delivery schedule; provided, however, that if Contractor during any other year of the current rate schedule period has purchased water in excess of 90 percent of the water scheduled to be delivered to Contractor during such other year, such delivery in excess of 90 percent for such other year may be used as a credit against years in such rate schedule period in which Contractor received less than 90 percent of the treated water as shown on the approved delivery schedule, and if Contractor has paid, purusant to such annual minimum charge, for water not delivered to it, Contractor shall have the right to receive such undelivered water without additional payment during the remainder of the then current rate schedule period at times when District has the delivery capability provided further, however, that:

a) If in any day of any year during the term hereof, District, for any reason, including reduced deliveries pursuant to the provisions of Article D hereof, shall be unable to deliver treated water to Contractor in an amount equal to 1/30 of the then current monthly scheduled amount as set forth in Article B, Section 1(e) as expressed as a uniform daily volume, the then minimum charge for that year shall be based upon an amount of water as calculated above in Section 4 reduced by an amount equal to the reduction required by District for each day a reduced delivery is required.

b) If in any day of any year during the term hereof District shall offer to deliver to Contractor water which shall fail to meet the quality requirements set forth in Article B, Section 7, hereof, then Contractor shall have the right to refuse to accept or reduce deliveries of water from District until such time as such water shall meet said quality requirements. In such event Contractor shall immediately notify District, and confirm in writing within 5 days of the beginning of any such period. In any such year the then minimum charge shall be reduced by an amount equal to the volume of water reduced by the Contractor up to an amount equal to 1/30 of the then current monthly scheduled amount as set forth in Article B, Section 1(e), as expressed as a uniform daily volume for each day that water service is so refused or reduced by the Contractor. If Contractor at

any time, or from time to time during the term hereof, should have the right to refuse to accept water from District by reason of the foregoing provisions of this Subsection 4b, but should nevertheless fail to exercise such right, such failure shall in no event be deemed to waive or limit exercise of such right by Contractor. Except as set forth by the foregoing provisions of this Section 4, Contractor shall not be obligated to pay for any water not accepted by it. Nothing contained in this Section 4 shall in any way be deemed to limit Contractor's obligation to pay for all water accepted by it from District in accordance with the appropriate rate set forth from time to time in District's then applicable rate schedule.

c) If in any year during the term hereof, the Board of Directors of District shall by Resolution place in effect a water reduction program in excess of 10 percent of normal usage, the monthly scheduled amounts or portions thereof, as set forth in Article B, Section 1e, for that portion of the year when such water reduction program is in effect shall be reduced by the same percentage as required by the water reduction program less 10 percent. The Contractor shall be notified in writing of such water reduction program.

5. Surplus - If District shall determine, in accordance with sound accounting practice, that the aggregate of the revenues received by it in any fiscal year, or any rate period, during the term hereof a) from the sale of treated water to Contractor and Other Contractors, b) from the sale of raw water, and c) through collection of the groundwater charges referred to in Article E hereof, has exceeded District's costs and expenses during such year, or rate period, District shall retain such excess and reserve the same for purchases of raw water, construction, maintenance or operation of existing or additional facilities for the importation, conservation, treatment or wholesale distribution of water, reduce its scheduled price of treated water or, subject to the provisions of the Act, reduce said groundwater charges. It is understood that the object in computing rates under this contract is to cover the costs related to the importation, conservation, treatment or wholesale distribution of water.

6. Non-Contract Water - The term "non-contract water" refers to treated water found by District to be available for delivery to the treated water contractors in addition to the scheduled amounts. Non-contract water may be available only at such times and such prices as determined by the District. District will notify Contractor in writing thereof. Deliveries of non-contract water to Contractor will only be made after Contractor has purchased 100 percent of the monthly scheduled amount as set forth in Article B, Section 1(e). Further, at the end of each fiscal year an adjustment in billing will be made and Contractor will be required to have paid for 100 percent of the approved delivery scheduled amount, less any other adjustments before the purchase of non-contract water is allowed. During any period in which non-contract water is not available and Contractor takes water in excess of its scheduled amount, such water will not be reclassified and will be charged for at the full contract price. Water taken in excess of scheduled amounts during periods when non-contract water is not available may be credited as a part of Contractor's minimum annual charge.

7. Billings - Billings shall be made monthly as follows: On or about the first of each month District will send to Contractor a bill calculated in accordance with the provisions of Article C hereof for all treated water accepted by Contractor from District during the preceding month. The final bill for each fiscal year shall include any sums due for the minimum charge required by Article C, Section 4, hereof. District shall make

every effort to make required meter readings on the last day of each calendar month, but District shall be entitled to make such readings three days prior to the close of any calendar month or within five days after the beginning of any calendar month.

8. Time and Method of Payment - Payments shall be made by Contractor to District within twenty (20) days after billing by District. In the event that Contractor in good faith contests the accuracy of any bill submitted to it pursuant to this contract, it shall give District notice thereof at least five (5) days prior to the day upon which payment of the stated amount is due. To the extent that District finds Contractor's contentions regarding the statement to be correct, it shall revise the statement accordingly and Contractor shall make payment of the amounts on or before the due date. To the extent that District does not find Contractor's contentions to be correct or where time is not available for a review of such contentions prior to the due date, Contractor shall pay the billed amount on or before the due date and may make the contested part of such payment under protest and seek to recover the amount in question from District.

ARTICLE D. AVAILABILITY OF WATER

1. In any year in which there may occur a water shortage by reason of drought or other temporary cause in the supply of water available for delivery to all users, District shall, before reducing other deliveries of water, reduce, or if necessary cease, to the extent permitted by the operation of District's facilities consistent with its obligations to receive water pursuant to the State and/or Federal Contract, all deliveries of untreated water for recharge of groundwaters.

2. If, despite such reduction or cessation of such deliveries of untreated water for groundwater recharge pursuant to the provisions of the preceding Section 1, a further reduction in deliveries shall become necessary if the treated water requirements set forth on the approved delivery schedule of Contractor and Other Contractors are to be met, District shall, before reducing deliveries to Contractor and Other Contractors, reduce the total amount of agricultural water (as defined in the Act) released to others for surface delivery during such fiscal year by an amount equal to the following: namely, the average of the releases of such surface-delivered agricultural water during the preceding three fiscal years multiplied by the percentage by which District's total receipt of water from State and Federal sources for agricultural use (as such use is defined in the State and Federal Contracts) is reduced in such year pursuant to provisions of said contracts.

3. If any reduction in deliveries of treated water shall become necessary following reductions in untreated water pursuant to the provisions of the preceding Sections 1 and 2, District shall reduce deliveries of treated water to Contractor and Other Contractors in an amount which bears the same proportion to the total amount of such reduction that the amount included in such treated water user's approved delivery schedule bears to the total of the amount included in the approved delivery schedule of Contractor and Other Contractors for that fiscal year, all as determined by District; provided that District may apportion on some other basis if such is required to meet minimum demands for domestic supply, fire protection, or sanitation during the year. District agrees to notify Contractor in writing promptly in the event any such reduction in deliveries to Contractor and Other Contractors shall be decided upon and concurrently of the amount of such reduction and of any changes in Contractor's approved delivery schedule.

4. District shall not be liable for failure to deliver water to Contractor hereunder in the amounts hereinabove provided if such failure shall be caused by drought or any other reason beyond the reasonable control of District.

5. District shall give Contractor written notice as far in advance as possible of any reduction in deliveries of treated water which may be necessary because of a shortage in water supply.

ARTICLE E. GROUNDWATER CHARGE

District agrees that in establishing or modifying the boundaries of any zone pursuant to the provisions of the Act, it will not act in an unreasonable, arbitrary, capricious or discriminatory manner. District further agrees that it will use its best efforts throughout the term of this contract to collect, without deduction or offset, from all persons operating groundwater-producing facilities (as said words are defined in Section 26.1 of the Act) the groundwater charges at the rates per acre-foot of water then applicable in the zone of the District in which each such facility is located.

ARTICLE F. REMEDIES

By reason of the specialized nature of the water service to be rendered, and for the further reason that the extent of any damage caused to either party by the other by reason of any breach of this contract may be extremely difficult to determine, it is agreed by the parties hereto that an action for damages is an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or at law, will be necessary to furnish either party hereto with an adequate remedy for the breach hereof.

ARTICLE G. GENERAL PROVISIONS

1. Amendments - This Contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law. District agrees that in the event of legally enforceable action by a cognizant governmental body, either a) producing a prospective change in the volume of use of water by Contractor's customers, as by the imposition of an order suspending new services, or b) requiring reuse of wastewater or forbidding or limiting the discharge of wastewater into San Francisco Bay, District will make such amendments to Exhibit B of this contract as the circumstances may reasonably and equitability require.

2. Challenge of Laws - Nothing herein contained shall be construed as stopping or otherwise preventing Contractor or District from contesting by litigation or other lawful means the validity, constitutionality, construction, or application of any law of this State, any ordinance of District, or any rule, regulation or practice of District or Contractor.

3. Waiver of Rights - Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any other default or matter. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving party.

4. Notices - All notices or other writings in this contract provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered, or certified, postage prepaid, and addressed as follows:

To District:	Santa Clara Valley Water District 5750 Almaden Expressway San Jose, California 95118
To Contractor:	City of Santa Clara Water Department 1500 Warburton Avenue Santa Clara, California 95050

The address to which any notice or other writing may be given or made or sent to either party may be changed upon written notice given by such party as above provided.

5. Separability - If any one or more of the covenants or agreements set forth in this contract on the part of District or Contractor, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in nowise affect the validity of this contract.

6. Paragraph Headings - Paragraph headings in this contract are for convenience only and are not to be construed as a part of this contract or in any way limiting or amplifying the provisions hereof.

7. Other Contracts - District agrees that each contract for the supply of treated water hereafter entered into by District with any Other Contractor shall contain provisions substantially similar to those herein set forth and shall not contain any provisions of a material nature more favorable to the Other Contractor than the provisions herein applicable to the Contractor.

/////

/////

/////

/////

/////

/////

/////

/////

/////

/////

IN WITNESS WHEREOF, District has caused this contract to be executed by the Chairman of its Board of Directors and caused its Official Seal to be hereunto affixed and Contractor has caused these presents to be executed on
19 , by its duly authorized officer.

ATTEST: SUSAN A. EKSTRAND

SANTA CLARA VALLEY WATER DISTRICT

~~Clerk of the Board of Directors~~
CLERK PRO TEM OF THE BOARD OF DIRECTORS

By
Chairman of the Board of Directors
"District"

Approved as to form:

General Counsel, Santa Clara
Valley Water District

CITY OF SANTA CLARA

ATTEST:

By
William A. Gissler, Mayor

By
D. R. Von Raesfeld,
Its City Manager

A. S. Belick, City Clerk

"Contractor"

Approved as to form:

Attorney for Contractor
Michael R. Downey
Assistant City Attorney

10C312

APPENDIX B

SFPUC Contract

DUPLICATE CITY CLERK FILE COPY
City of Santa Clara

WATER SUPPLY AGREEMENT

between

THE CITY AND COUNTY OF SAN FRANCISCO

and

WHOLESALE CUSTOMERS
in
ALAMEDA COUNTY, SAN MATEO COUNTY AND
SANTA CLARA COUNTY

JULY 2009

TABLE OF CONTENTS

Page

Introduction 1

Article 1. Parties, Effective Date, and Defined Terms 1

1.01 Definitions 1

1.02 Parties 1

1.03 Effective Date 2

Article 2. Term; Amendments During Term 4

2.01 Term 4

2.02 Extension and Renewal of Term 4

2.03 Amendments 5

Article 3. Water Supply 8

3.01 Supply Assurance 8

3.02 Allocation of Supply Assurance 9

3.03 Wholesale Customer Service Areas 10

3.04 Permanent Transfers of Individual Supply Guarantees 12

3.05 Restrictions on Resale 12

3.06 Conservation; Use of Local Sources; Water Management Charge 13

3.07 Restrictions on Purchases of Water from Others; Minimum Annual Purchases 14

3.08 Water Quality 14

3.09 Completion of WSIP 15

3.10 Regional Water System Repair, Maintenance and Operation 15

3.11 Shortages 16

3.12 Wheeling of Water from Outside SFPUC System 18

3.13 Limits on New Customers 19

3.14 Measurement of Water 21

3.15 New Sources of Water Supply to Maintain Supply Assurance 22

3.16 New Sources of Water Supply to Increase Supply Assurance 23

3.17 Westside Basin Conjunctive Use Program 24

Article 4. Implementation of Interim Supply Limitation 27

4.01 Interim Supply Limitation Imposed by SFPUC 27

4.02 Retail and Wholesale Customer Allocations Under Interim Supply Limitation 27

4.03 Transfers of Interim Supply Allocations 27

4.04 Environmental Enhancement Surcharge 28

TABLE OF CONTENTS
(continued)

Page

4.05	San Jose/ Santa Clara Interim Supply Allocation and Process for Reduction/ Termination	30
4.06	San Francisco Decisions in 2018 Regarding Future Water Supply	31
4.07	Retained Discretion of SFPUC and Wholesale Customers	32
Article 5.	Wholesale Revenue Requirement	34
5.01	Scope of Agreement	34
5.02	General Principles	34
5.03	Capital Cost Recovery - Existing Regional Assets	36
5.04	Capital Cost Contribution - New Regional Assets	38
5.05	Water Enterprise Operation and Maintenance Expenses	40
5.06	Water Enterprise Administrative and General Expenses	42
5.07	Water Enterprise Property Taxes	45
5.08	Hetch Hetchy Enterprise Expenses	45
5.09	Hetch Hetchy Enterprise Capital Costs	47
5.10	Additional Agreements Related to Financial Issues	48
Article 6.	Integration of Wholesale Revenue Requirement with SFPUC Budget Development and Rate Adjustments	51
6.01	General	51
6.02	Budget Development	51
6.03	Rate Adjustments	51
6.04	Rate Structure	53
6.05	Balancing Account	54
6.06	Wholesale Revenue Coverage Reserve	56
6.07	Working Capital Requirement	58
6.08	Wholesale Capital Fund	59
Article 7.	Accounting Procedures; Compliance Audit	61
7.01	SFPUC Accounting Principles, Practices	61
7.02	Calculation of and Report on Wholesale Revenue Requirement	62
7.03	Appointment of Compliance Auditor	64
7.04	Conduct of Compliance Audit	64
7.05	Issuance of Compliance Auditor's Report	67
7.06	Wholesale Customer Review	67
Article 8.	Other Agreements of the Parties	69
8.01	Arbitration and Judicial Review	69

TABLE OF CONTENTS
(continued)

Page

8.02 Attorneys' Fees 73
8.03 Annual Meeting and Report 74
8.04 Administrative Matters Delegated to BAWSCA 75
8.05 Preservation of Water Rights; Notice of Water Rights Proceedings 76
8.06 SFPUC Rules and Regulations 77
8.07 Reservations of, and Limitations on, Claims 77
8.08 Prohibition of Assignment 80
8.09 Notices 80
8.10 Incorporation of Attachments 81
8.11 Interpretation 81
8.12 Actions and Approvals by San Francisco 81
8.13 Counterparts 82
8.14 Limitations on Damages 82
8.15 Force Majeure 82
8.16 No Third-Party Beneficiaries 83
8.17 Good Faith and Fair Dealing 83
Article 9. Implementation and Special Provisions Affecting Certain Wholesale Customers 84
9.01 General; Individual Water Sales Contracts 84
9.02 California Water Service Company 84
9.03 City of Hayward 86
9.04 Estero Municipal Improvement District 87
9.05 Stanford University 87
9.06 City of San Jose and City of Santa Clara 88
9.07 City of Brisbane, Guadalupe Valley Municipal Improvement District, Town of Hillsborough 89

LIST OF ATTACHMENTS

A	Definitions
B	Wholesale Customer Regional Water System Purchases 2007-2008 (Section 1.03)
C	List of Agencies and Individual Supply Guarantees (Section 3.02)
D	Procedure for Pro Rata Reduction of Individual Supply Guarantees if Total Use Exceeds 184 MGD (Section 3.02)
E	Minimum Quantities for Dual Source Agencies (Section 3.07.C)
F	Sample Individual Water Sales Contract (Section 9.01)
G	Water Quality Notification and Communications Plan (Section 3.08.B)
H	Tier 1 Shortage Plan (Section 3.11.C)
I	NOT USED
J	Water Use Measurement and Tabulation (Section 3.14)
K-1	Wholesale Customers' Share of Net Book Value of Existing Assets (Section 5.03)
K-2	Wholesale Customers' Share of the Book Value of Revenue-Funded Capital Expenditures (Section 5.03)
K-3	25 Year Payoff Schedule for Existing Rate Base - Water Enterprise Regional Assets and One Direct Wholesale Asset (Section 5.03)
K-4	25 Year Payoff Schedule for Existing Rate Base - Hetch Hetchy Water Assets and Water-Related Portion of Joint Assets (Section 5.03)
K-5	Unexpended Appropriations for Revenue-Funded Regional Assets (Section 5.03)
L-1	Identification of WSIP Projects as Regional/Retail (Section 5.04)
L-2	Certificate of Use of Proceeds (Section 5.04.A)
L-3	Annual Report on Expenditures of and Earnings on Proceeds (Section 5.04.A)
M-1	Revenue-Funded Capital Additions (Section 5.04.B)
M-2	Revenue-Funded Capital Annual Reporting Requirements (Section 5.04.B)
M-3	Wholesale Revenue-Funded Capital Fund (Section 6.08)
N-1	Balancing Account/Rate Setting Calculation Table (Section 6.03.A.3.a)

N-2 Wholesale Revenue Requirement Schedules (Section 6.03.A.3.b)

N-3 Schedule of Projected Water Sales, Wholesale Revenue Requirement and Wholesale Rates (Section 6.03.A.3.c)

O Statement of Wholesale Revenue Requirement/Changes in Balancing Account (Section 7.02.B.1)

P Management Representation Letter (Section 7.02.B.5)

Q San Jose and Santa Clara Service Areas (Section 9.06)

WHOLESALE WATER SUPPLY AGREEMENT

Introductory Statement

Both San Francisco, as the Regional Water System owner and operator, and its Wholesale Customers share a commitment to the Regional Water System providing a reliable supply of high quality water at a fair price, and achieving these goals in an environmentally sustainable manner.

Article 1. Parties, Effective Date, and Defined Terms

1.01 Definitions

The capitalized terms used in this Agreement shall have the meanings set forth in Attachment A.

1.02 Parties

The parties to this Agreement are the City and County of San Francisco and such of the following entities (all of which purchase water from San Francisco) as have executed this Agreement:

Alameda County Water District
California Water Service Company
City of Brisbane
City of Burlingame
City of Daly City
City of East Palo Alto
City of Hayward
City of Menlo Park
City of Millbrae
City of Milpitas
City of Mountain View
City of Palo Alto
City of Redwood City

City of San Bruno
City of San José
City of Santa Clara
City of Sunnyvale
Coastside County Water District
Estero Municipal Improvement District
Guadalupe Valley Municipal Improvement District
Mid-Peninsula Water District
North Coast County Water District
Purissima Hills Water District
Skyline County Water District
Stanford University
Town of Hillsborough
Westborough Water District

The entities listed above which have executed this Agreement shall be collectively referred to as the "Wholesale Customers."

1.03 Effective Date

A. Except as provided in subsection C, this Agreement shall become effective only when it has been approved by San Francisco and by each of the entities listed in Section 1.02 and when San Francisco and each of those entities (except for the City of Hayward) have entered into an Individual Water Sales Contract as provided in Section 9.01.

B. If San Francisco and all of the entities listed in Section 1.02 approve this Agreement and (except for the City of Hayward) an Individual Water Sales Contract on or before July 1, 2009, the effective date shall be July 1, 2009. If San Francisco and all of the entities listed in Section 1.02 approve this Agreement and (except for the City of Hayward) an Individual Water Sales Contract after July 1, 2009 but on or before September 1, 2009, the effective date shall be the date on which the last entity listed in Section 1.02 approves this Agreement and, if required, an Individual Water Sales Contract.

C. If by September 1, 2009 this Agreement has been approved by fewer than all of the entities listed in Section 1.02 or fewer than all of such entities (other than the City of Hayward) have entered into an Individual Water Sales Contract, but it has been approved by entities representing at least 75% in number and 75% of the water purchased from SFPUC by

all listed agencies during FY 2007-08 (i.e., 173.39 MGD), then San Francisco shall have the option to waive the requirement in subsection A that all listed agencies have approved this Agreement and an Individual Water Sales Contract as a condition precedent to this Agreement and any Individual Water Sales Contract becoming effective. San Francisco shall have 60 days from September 1, 2009 (i.e., until October 31, 2009) within which to decide whether or not to waive the condition. If San Francisco decides to waive the condition, those listed agencies that have approved this Agreement and Individual Water Sales Contract before October 31, 2009 will be bound thereby and this Agreement and Individual Water Sales Contracts will become effective as to them, as of the date of San Francisco's waiver. For purposes of determining whether listed agencies that have approved this Agreement represent at least 75% of the water purchased during FY 2007-08, the quantity of water attributable to each listed entity shall be as set forth on Attachment B.

D. The provisions of Article 9 that apply to fewer than all Wholesale Customers (i.e., Sections 9.02 - 9.07) shall not become effective unless San Francisco and the entity to which the section applies have each approved (1) this Agreement, and (2) the underlying Individual Water Sales Contract, unless otherwise provided in Article 9. This provision does not affect the continued enforceability of provisions in those sections that derive from independently enforceable judgments, orders or agreements.

Article 2. Term; Amendments During Term

2.01 Term

The term ("Term") of this Agreement shall be twenty five (25) years. The Term shall begin on July 1, 2009, regardless of whether the Effective Date is before or after that date, and shall end on June 30, 2034. Except as provided in Article 9, the term of all Individual Water Sales Contracts shall also begin on July 1, 2009 and end on June 30, 2034.

2.02 Extension and Renewal of Term

A. In December 2031, the SFPUC may provide written notice to the Wholesale Customers that it is willing to extend the Term of this Agreement. Between January 1, 2032 and June 30, 2032, any Wholesale Customer may accept the SFPUC's offer to extend the Term by providing a written notice of extension to the SFPUC. If such notices of extension are received from Wholesale Customers representing at least two-thirds in number as of June 30, 2032 and seventy five percent (75%) of the quantity of water delivered by the SFPUC to all Wholesale Customers during fiscal year 2030-31, the Term shall be extended for another five (5) years ("First Extension Term"), through June 30, 2039. No party to this Agreement which does not wish to remain a party during the Extension Term shall be compelled to do so by the actions of other parties under this section.

B. In December 2036, the SFPUC may provide written notice to the Wholesale Customers that it is willing to extend the Term of this Agreement. Between January 1, 2037 and June 30, 2037, any Wholesale Customer may accept the SFPUC's offer to extend the Term by providing a written notice of extension to the SFPUC. If such notices of extension are received from Wholesale Customers representing at least two-thirds in number as of June 30, 2037 and seventy five percent (75%) of the quantity of water delivered by the SFPUC to all Wholesale Customers during fiscal year 2035-36, the Term shall be extended for another five (5) years ("Second Extension Term"), through June 30, 2044. No party to this Agreement which does not wish to remain a party during the Extension Term shall be compelled to do so by the actions of other parties under this section.

C. After the expiration of the Term, and, if applicable, the Extension Terms, this Agreement may be renewed by mutual consent of the parties, subject to any modifications thereof which may be determined at that time. If fewer than all of the parties desire to renew this Agreement beyond its Term, with or without modifications, the SFPUC and the Wholesale

Customers who wish to extend the Agreement shall be free to do so, provided that no party to this Agreement which does not wish to become a party to such a renewed Agreement shall be compelled to do so by the actions of other parties under this section.

2.03 Amendments

A. Amendments to Agreement; General

1. This Agreement may be amended with the written consent of all parties.

2. This Agreement may also be amended with the written consent of San Francisco and of Wholesale Customers representing at least two-thirds in number (i.e., 18 as of July 1, 2009) and seventy five percent (75%) of the quantity of water delivered by San Francisco to all Wholesale Customers during the fiscal year immediately preceding the amendment.

3. No amendment which adversely affects a Fundamental Right of a Wholesale Customer may be made without the written consent of that customer. Amendments to Article 5 which merely affect the allocation of costs between City Retail customers on the one hand and Wholesale Customers collectively on the other, and amendments to Articles 6 and 7 which merely alter budgetary, accounting and auditing procedures do not affect Fundamental Rights and may be made with the consent of parties meeting the requirements of Section 2.03.A.2.

4. When an amendment has been approved by San Francisco and the number of Wholesale Customers required in Section 2.03.A.2, San Francisco shall notify each of the Wholesale Customers in writing of the amendment's adoption. Notwithstanding any provision of law or this Agreement, any Wholesale Customer that claims that the amendment violates its Fundamental Rights under Section 2.03.A.3, shall have 30 days from the date San Francisco delivers the notice of its adoption in which to challenge the amendment's validity through a judicial action. If no such action is filed within 30 days, the amendment shall be finally and conclusively deemed to have been adopted in compliance with this section.

B. Amendments to Article 9

1. Notwithstanding the provisions of Sections 2.03.A.2 and 2.03.A.3, any provision of Article 9 which applies only to an individual Wholesale Customer may be amended with the written concurrence of San Francisco and the Wholesale Customer to which it applies;

provided that the amendment will not, directly or indirectly, adversely affect the Fundamental Rights of the other Wholesale Customers.

2. Before making any such amendment effective, San Francisco shall give notice, with a copy of the text of the proposed amendment, to all other Wholesale Customers. The Wholesale Customers shall have 30 days in which to object to the amendment on the ground that it is not permissible under this subsection. If no such objection is received by San Francisco, the proposed amendment shall become effective. If one or more Wholesale Customers object to the amendment, San Francisco, the individual Wholesale Customer with which San Francisco intends to effect the amendment, and the Wholesale Customer(s) which lodged the objection shall meet to discuss the matter.

3. If the dispute cannot be resolved and San Francisco and the Wholesale Customer involved elect to proceed with the amendment, either San Francisco or the Wholesale Customer shall give written notice of such election to each Wholesale Customer that has objected. Any Wholesale Customer that has objected to such amendment shall have 30 days from receipt of this notice within which to commence an action challenging the validity of such amendment, and such amendment shall be deemed effective as of the end of this 30-day period unless restrained by order of court.

C. **Amendments to Attachments**. The following attachments may be amended with the written concurrence of San Francisco and BAWSCA on behalf of the Wholesale Customers:

Attachment	Name
G	January 2006 Water Quality Notification and Communications Plan
J	Water Use Measurement and Tabulation
L-1	Identification of WSIP Projects as Regional/Retail
N-1	Balancing Account/Rate Setting Calculation Table
N-2	Wholesale Revenue Requirement Schedules
N-3	Schedule of Projected Water Sales, Wholesale Revenue Requirement and Wholesale Rates
P	Management Representation Letter

Amendments to these attachments shall be approved on behalf of San Francisco by the Commission and on behalf of BAWSCA by its Board of Directors, unless the Commission by resolution delegates such authority to the General Manager of the SFPUC or the Board of Directors by resolution delegates such authority to the General Manager/CEO of BAWSCA.

D. **Amendments to Individual Water Sales Contracts**. Individual Water Sales Contracts described in Section 9.01 may be amended with the written concurrence of San Francisco and the Wholesale Customer which is a party to that Individual Water Sales Contract; provided that the amendment is not inconsistent with this Agreement or in derogation of the Fundamental Rights of other Wholesale Customers under this Agreement.

Article 3. Water Supply

3.01 Supply Assurance

A. San Francisco agrees to deliver water to the Wholesale Customers up to the amount of the Supply Assurance. The Supply Assurance is for the benefit of the entities listed in Section 1.02, irrespective of whether or not they have executed this Agreement. Water delivered by San Francisco to Retail Customers shall not be included in the Supply Assurance. Until December 31, 2018, the foregoing commitment is subject to Article 4.

B. Both the Supply Assurance and the Individual Supply Guarantees identified in Section 3.02 are expressed in terms of daily deliveries on an annual average basis and do not themselves constitute a guarantee by San Francisco to meet peak daily or hourly demands of the Wholesale Customers, irrespective of what those peak demands may be. The parties acknowledge, however, that the Regional Water System has been designed and constructed to meet peak daily and hourly demands and that its capacity to do so has not yet been reached. San Francisco agrees to operate the Regional Water System to meet peak requirements of the Wholesale Customers to the extent possible without adversely affecting its ability to meet peak demands of Retail Customers. This Agreement shall not preclude San Francisco from undertaking to meet specific peak demand requirements of individual Wholesale Customers in their Individual Water Sales Contracts.

C. The Supply Assurance is perpetual and shall survive the expiration or earlier termination of this Agreement. Similarly, the Individual Supply Guarantees identified in Section 3.02 and/or the Individual Water Sales Contracts are perpetual and shall survive the expiration or earlier termination of this Agreement or the Individual Water Sales Contracts.

D. Notwithstanding the Supply Assurance established by this section, the Individual Supply Guarantees identified in Section 3.02 and the Individual Water Sales Contracts, the amount of water made available by San Francisco to the Wholesale Customers is subject to reduction, to the extent and for the period made necessary by reason of water shortage, Drought, Emergencies, or by malfunctioning or rehabilitation of facilities in the Regional Water System. Any such reduction will be implemented in accordance with Section 3.11. The amount of water made available to the Wholesale Customers may not be reduced, however, merely because the water recycling and groundwater projects which the WSIP envisions to be constructed within San Francisco, or the conservation programs intended to reduce water use

by Retail Customers that are included in the WSIP, do not generate the yield or savings (10 MGD combined) anticipated by San Francisco.

3.02 Allocation of Supply Assurance

A. Pursuant to Section 7.02 of the 1984 Agreement, a portion of the Supply Assurance has been allocated among 24 of the 27 Wholesale Customers. These Individual Supply Guarantees are also expressed in terms of annual average metered deliveries of millions of gallons per day and are listed in Attachment C.

B. Three Wholesale Customers do not have Individual Supply Guarantees. The cities of San Jose and Santa Clara do not have an Individual Supply Guarantees because San Francisco has provided water to them on a temporary and interruptible basis as described in Sections 4.05 and 9.06. The City of Hayward does not have an Individual Supply Guarantee because of the terms of the 1962 contract between it and San Francisco, as further described in Section 9.03.

C. If the total amount of water delivered by San Francisco to Hayward and to the Wholesale Customers that are listed on Attachment C exceeds 184 MGD over a period of three consecutive fiscal years (i.e., July 1 through June 30), then the Individual Supply Guarantees of those Wholesale Customers listed on Attachment C shall be reduced pro rata so that their combined entitlement and the sustained use by Hayward does not exceed 184 MGD. The procedure for calculating the pro rata reduction in Individual Supply Guarantees is set out in Attachment D.

1. The provisions of this subsection C are not in derogation of the reservation of claims to water in excess of the Supply Assurance which are contained in Section 8.07. Nor do they constitute an acknowledgement by Wholesale Customers other than Hayward that San Francisco is obligated or entitled to reduce their Individual Supply Guarantees in the circumstances described herein. The provisions of this subsection C shall, however, be operative unless and until a court determines that its provisions violate rights of the Wholesale Customers derived independently of this Agreement.

2. The foregoing paragraph is not intended to and shall not constitute a contractual commitment on the part of San Francisco to furnish more water than the Supply Assurance to the Wholesale Customers or a concession by San Francisco that the provisions of this subsection violate any rights of the Wholesale Customers.

D. Notwithstanding the reservation of claims contained in Sections 3.02.C and 8.07, it shall be the responsibility of each Wholesale Customer to limit its purchases of water from San Francisco so as to remain within its Individual Supply Guarantee. San Francisco shall not be liable to any Wholesale Customer or be obligated to supply more water to any Wholesale Customer individually or to the Wholesale Customers collectively than the amount to which it or they are otherwise entitled under this Agreement due to the use by any Wholesale Customer of more water than the amount to which it is entitled under this Agreement.

E. San Francisco shall install such new connections between the Regional Water System and the distribution system of any Wholesale Customer that are necessary to deliver the quantities of water to which the Wholesale Customer is entitled under this Agreement. San Francisco shall have the right to determine the location of such connections, in light of the need to maintain the structural integrity of the Regional Water System and, where applicable, the need to limit peaking directly off of Regional Water System pipelines by a Wholesale Customer's individual retail customers, the need to ensure that a Wholesale Customer's individual retail customers have access to alternative sources of water in the event of a reduction in San Francisco's ability to provide them with water, and other factors which may affect the desirability or undesirability of a particular location. San Francisco's decisions regarding the location of new connections and the location, size and type of any new meters shall not be reviewable by a court except for an abuse of discretion or failure to provide a Wholesale Customer with connections and meters adequate to deliver the quantity of water to which it is entitled under this Agreement.

3.03 <u>Wholesale Customer Service Areas</u>

A. Each of the Individual Water Sales Contracts described in Section 9.01 will contain, as an exhibit, a map of the Wholesale Customer's service area. A Wholesale Customer may not deliver water furnished to it by San Francisco outside the boundary of its service area without the prior written consent of San Francisco, except for deliveries to another Wholesale Customer on an emergency and temporary basis pursuant to Section 3.07.B.

B. If a Wholesale Customer wishes to expand its service area, it shall request San Francisco's consent to the expansion and provide information reasonably requested by San Francisco about the amount of water projected to be purchased from San Francisco to meet demand within the area proposed to be added to the service area.

C. San Francisco may refuse a Wholesale Customer's request to expand its service area on any reasonable basis. If San Francisco denies a request by a Wholesale Customer to expand its service area, or fails to act on the request for six months after it has been submitted, the Wholesale Customer may challenge San Francisco's denial or delay in court. Such a challenge may be based on the Wholesale Customers' claim, reserved in Section 8.07, that San Francisco is obligated under federal or state law to furnish water, included within its Individual Supply Guarantee, to it for delivery outside its then-existing service area and that it is entitled to enlarge its service area to supply water to such customers. San Francisco reserves the right to contest any such claim on any applicable ground. This subsection does not apply to San Jose and Santa Clara, whose maximum service areas are fixed pursuant to Section 9.06.

D. This section will not prevent San Francisco and any Wholesale Customer, other than San Jose and Santa Clara, from agreeing in an Individual Water Sales Contract or an amendment thereto that:

- the Wholesale Customer may expand its service area without subsequent San Francisco approval to a definitive size but no larger, or
- the Wholesale Customer will not expand its service area beyond its present limits without San Francisco approval

and waiving the provisions of this section with respect to any additional expansion.

E. If two or more Wholesale Customers agree to adjust the boundaries of their respective service areas so that one assumes an obligation to serve customers in an area that was previously within the service area of another Wholesale Customer, they may also correspondingly adjust their respective Individual Supply Guarantees. Such adjustments are not subject to the requirements of Section 3.04 and shall require only the consent of San Francisco and the Wholesale Customers involved, so long as the Supply Assurance and the Individual Supply Guarantees of other Wholesale Customers are not affected. Service area boundary adjustments that would result in the expansion of any California Water Service Company service areas are subject to the requirements of Section 9.02.D. Any adjustment of service area boundaries that would result in the supply of water in violation of this Agreement or the Act shall be void.

F. San Francisco acknowledges that it has heretofore consented in writing to deliveries of water by individual Wholesale Customers outside their service area boundaries and

agrees that nothing in this Agreement is intended to affect such prior authorizations, which remain in full force and effect according to their terms. Such authorizations shall be identified in the Individual Water Sales Contracts.

3.04 Permanent Transfers of Individual Supply Guarantees

A. A Wholesale Customer that has an Individual Supply Guarantee may transfer a portion of it to one or more other Wholesale Customers, as provided in this section.

B. Transfers of a portion of an Individual Supply Guarantee must be permanent. The minimum quantity that may be transferred is 1/10th of a MGD.

C. Transfers of portions of Individual Supply Guarantees are subject to approval by the SFPUC. SFPUC review is limited to determining (1) whether a proposed transfer complies with the Act, and (2) whether the affected facilities in the Regional Water System have sufficient capacity to accommodate delivery of the increased amount of water to the proposed transferee.

D. The participants in a proposed transfer shall provide notice to the SFPUC specifying the amount of the Individual Supply Guarantee proposed to be transferred, the proposed effective date of the transfer, which shall not be less than 60 days after the notice is submitted to the SFPUC, and the Individual Supply Guarantees of both participants resulting from the transfer. The SFPUC may require additional information reasonably necessary to evaluate the operational impacts of the transfer. The SFPUC will not unreasonably withhold or delay its approval; if the SFPUC does not act on the notice within 60 days, the transfer will be deemed to have been approved.

E. Within 30 days after the transfer has become effective, both the transferor and the transferee will provide notice to the SFPUC and BAWSCA. By September 30 of each year during the Term, the SFPUC and BAWSCA will prepare an updated Attachment C to reflect transfers occurring during the immediately preceding fiscal year.

F. Amounts transferred will remain subject to pro rata reduction under the circumstances described in Section 3.02.C and according to the formula set forth in Attachment D.

3.05 Restrictions on Resale

Each Wholesale Customer agrees that it will not sell any water purchased from San Francisco to a private party for resale by such private party to others in violation of the Act.

Each Wholesale Customer also agrees that it will not sell water purchased from San Francisco to another Wholesale Customer without prior written approval of the SFPUC, except on a temporary and emergency basis as permitted in Section 3.07.B.2. The SFPUC agrees that it will not unreasonably withhold its consent to a request by a Wholesale Customer to deliver water to another Wholesale Customer for resale.

3.06 Conservation; Use of Local Sources; Water Management Charge

A. In order to support the continuation and expansion of water conservation programs, water recycling, and development of alternative supplies within the Wholesale Customers' service areas, the SFPUC will, if requested by BAWSCA, include the Water Management Charge in water bills sent to Wholesale Customers. The SFPUC will deliver all Water Management Charge revenue to BAWSCA monthly and shall deliver an annual accounting of Water Management Charge revenue to BAWSCA within 90 days after the end of each fiscal year. The SFPUC's obligations to collect and deliver Water Management Charge revenue to BAWSCA under this subsection are conditioned on BAWSCA's delivery to the SFPUC of an annual report describing the projects and programs on which Water Management Charge funds received from the SFPUC during the previous fiscal year were expended and an estimate of the amount of water savings attributable to conservation programs and of the yield of alternative supplies developed. This report will be due within 180 days after the end of each fiscal year during which Water Management Charge funds were received.

B. The SFPUC will work together with BAWSCA to explore ways to support water conservation programs, recycling projects, and conjunctive use alternatives outside the Wholesale Service Area, in particular projects and programs that have the potential to increase both flows in the lower Tuolumne River (downstream of New Don Pedro Reservoir) and water deliveries to the Regional Water System.

C. Each Wholesale Customer shall take all actions within its legal authority related to water conservation that are necessary to insure that the SFPUC (a) remains eligible for (i) state and federal grants and (ii) access to the Drought Water Bank operated by the California Department of Water Resources, as well as other Drought-related water purchase or transfer programs, and (b) complies with future legal requirements imposed on the Regional Water System by the federal government, the State, or any other third party as conditions for receiving funding or water supply.

D. San Francisco and each Wholesale Customer agree that they will diligently apply their best efforts to use both surface water and groundwater sources located within their respective service areas and available recycled water to the maximum feasible extent, taking into account the environmental impacts, the public health effects and the effects on supply reliability of such use, as well as the cost of developing such sources.

3.07 Restrictions on Purchases of Water from Others; Minimum Annual Purchases

A. Each Wholesale Customer (except for Alameda County Water District and the cities of Milpitas, Mountain View and Sunnyvale) agrees that it will not contract for, purchase or receive, with or without compensation, directly or indirectly, from any person, corporation, governmental agency or other entity, any water for delivery or use within its service area without the prior written consent of San Francisco.

B. The prohibition in subsection A does not apply to:

1. recycled water;

2. water necessary on an emergency and temporary basis, provided that the Wholesale Customer promptly gives San Francisco notice of the nature of the emergency, the amount of water that has been or is to be purchased, and the expected duration of the emergency; or

3. water in excess of a Wholesale Customer's Individual Supply Guarantee.

C. Alameda County Water District and the cities of Milpitas, Mountain View and Sunnyvale may purchase water from sources other than San Francisco, provided that San Francisco shall require that each purchase a minimum annual quantity of water from San Francisco. These minimum quantities are set out in Attachment E and shall also be included in the Individual Water Sales Contracts between San Francisco and each of these four Wholesale Customers. The minimum purchase requirement in these Individual Water Sales Contracts will be waived during a Drought or other period of water shortage if the water San Francisco makes available to these Wholesale Customers is less than its minimum purchase quantity.

3.08 Water Quality

A. San Francisco shall deliver treated water to Wholesale Customers (except Coastside County Water District, which receives untreated water from Crystal Springs and Pilarcitos Reservoirs) that complies with primary maximum contaminant level and treatment

technique standards at the regulatory entry points designated in the San Francisco Regional Water System Domestic Water Supply Permit (currently Permit No. 02-04-04P3810001) issued by the California Department of Public Health (CDPH).

B. San Francisco will provide notice to the Wholesale Customers in accordance with the Water Quality Notification and Communications Plan (current version dated January 2006), attached hereto as Attachment G. San Francisco will regularly update its plan in consultation with the Wholesale Customers and the CDPH. The next update will be completed one year after the Effective Date and include expanded coverage of secondary maximum contaminant level exceedances and water quality communication triggers. The plan will note that the Wholesale Customers will receive the same notification no later than the San Francisco water system (currently Permit No. 02-04-01P3810011) except for distribution-related issues.

C. San Francisco and the Wholesale Customers will establish a Water Quality Committee. The Water Quality Committee will meet at least quarterly to collaboratively address water quality issues, such as Water Quality Notification and Communications Plan updates, regulatory issues, and water quality planning studies/ applied research. San Francisco and each Wholesale Customer will designate a representative to serve on the committee. There will be a Chair and Vice Chair position for the Water Quality Committee. The Chair and Vice Chair positions will be held by San Francisco and the Wholesale Customers and rotate between them on an annual basis.

3.09 Completion of WSIP

San Francisco will complete construction of the physical facilities in the WSIP by December 31, 2015. The SFPUC agrees to provide for full public review and comment by local and state interests of any proposed changes that delay previously adopted project completion dates or that delete projects. The SFPUC shall meet and consult with BAWSCA before proposing to the Commission any changes in the scope of WSIP projects which reduce their capacity or ability to achieve adopted levels of service goals. The SFPUC retains discretion to determine whether to approve the physical facilities in the WSIP until after it completes the CEQA process as set forth in Section 4.07.

3.10 Regional Water System Repair, Maintenance and Operation

A. San Francisco will keep the Regional Water System in good working order and repair consistent with prudent utility practice.

B. San Francisco will submit reports to its Retail and Wholesale Customers on the "State of the Regional Water System," including reports on completed and planned maintenance, repair or replacement projects or programs, by September of every even-numbered year, with reports to start in September 2010.

C. San Francisco will cooperate with any audit of the SFPUC's asset management practices that may be initiated and financed by BAWSCA or the Wholesale Customers. BAWSCA may contract with third parties to conduct the audits. San Francisco will consider the findings and recommendations of such audits and will provide a written response indicating agreement with the recommendations, or disagreement with particular recommendations and the reasons why, within 90 calendar days after receipt.

D. San Francisco will continue to operate its reservoirs in a manner that assigns higher priority to the delivery of water to the Bay Area and the environment than to the generation of electric power. The SFPUC, as the Regional Water System operator, is solely responsible for making day-to-day operational decisions.

3.11 Shortages

A. **Localized Water Reductions.** Notwithstanding San Francisco's obligations to deliver the Supply Assurance to the Wholesale Customers collectively and the Individual Supply Guarantees to Wholesale Customers individually, San Francisco may reduce the amount of water available or interrupt water deliveries to specific geographical areas within the Regional Water System service area to the extent that such reductions are necessary due to Emergencies, or in order to install, repair, rehabilitate, replace, investigate or inspect equipment in, or perform other maintenance work on, the Regional Water System. Such reductions or interruptions may be imposed by San Francisco without corresponding reductions or interruptions in the amount of water available to SFPUC water users outside the specific geographical area where reductions or interruptions are necessary, if the system's ability to supply water outside the specific geographical area has not been impaired. In the event of such a reduction or interruption, San Francisco will restore the supply of water to the specific geographical area as soon as is possible. Except in cases of Emergencies (during which oral notice shall be sufficient), San Francisco will give the affected Wholesale Customer(s) reasonable written notice of such localized reductions or interruptions, the reasons therefor, and the probable duration thereof.

B. **System-Wide Shortages and SFPUC Response to Regional Emergencies.** Following a major system emergency event, the SFPUC will work closely with its Wholesale Customers to monitor customer demand, including the demand source. In the event that any individual Wholesale Service Area or Retail Service Area customer's uncontrolled distribution system leaks could result in major water waste and endanger the supply provided by the Regional Water System as a whole, flow through some customer connections may need to be temporarily reduced or terminated. SFPUC will work closely with customers to assess the nature of the demand (e.g. fire-fighting versus leakage), so that public health and safety protection can be given top priority.

1. All emergencies that require use of non-potable source water will require use of chlorine, or other suitable disinfectant, if feasible.

2. San Francisco will use its best efforts to meet the seismic reliability and delivery reliability level of service goals adopted by the Commission in conjunction with the WSIP. San Francisco will distribute water on an equitable basis throughout the Regional Water System service area following a regional Emergency, subject to physical limitations caused by damage to the Regional Water System.

3. San Francisco's response to Emergencies will be guided by the then-current version of the ERRP. The SFPUC shall periodically review, and the Commission may amend, the ERRP to ensure that it remains an up-to-date and effective management tool.

4. The SFPUC will give the Wholesale Customers notice of any proposal to amend the ERRP in a manner that would affect them. The notice will be delivered at least thirty days in advance of the date on which the proposal is to be considered by the Commission and will be accompanied by the text of the proposed amendment.

C. **Shortages Caused by Drought; Acquisition of Dry Year Supplies.** Notwithstanding San Francisco's obligations to deliver the Supply Assurance to the Wholesale Customers collectively and the Individual Supply Guarantees to Wholesale Customers individually, San Francisco may reduce the amount of water available to the Wholesale Customers in response to Drought.

1. The Tier 1 Shortage Plan (Attachment H) will continue to be used to allocate water from the Regional Water System between Retail and Wholesale Customers during system-wide shortages of 20% or less.

2. San Francisco and the Wholesale Customers may negotiate in good faith revisions to the Tier 1 Shortage Plan to adjust for and accommodate anticipated changes due to demand hardening in the SFPUC's Wholesale and Retail Service Areas. Until agreement is reached, the current Tier 1 Shortage Plan will remain in effect.

3. The SFPUC will honor allocations of water among the Wholesale Customers ("Tier 2 Allocations") provided by BAWSCA or if unanimously agreed to by all Wholesale Customers. If BAWSCA or all Wholesale Customers do not provide the SFPUC with Tier 2 Allocations, then the SFPUC may make a final allocation decision after first meeting and discussing allocations with BAWSCA and the Wholesale Customers. For Regional Water System shortages in excess of 20%, San Francisco shall (a) follow the Tier 1 Shortage Plan allocations up to the 20% reduction, (b) meet and discuss how to implement incremental reductions above 20% with the Wholesale Customers, and (c) make a final determination of allocations above the 20% reduction. After the SFPUC has made the final allocation decision, the Wholesale Customers shall be free to challenge the allocation on any applicable legal or equitable basis.

4. San Francisco will use its best efforts to identify potential sources of dry year water supplies and establish the contractual and other means to access and deliver those supplies in sufficient quantity to meet a goal of not more than 20 percent system-wide shortage in any year of the design drought.

5. San Francisco will cooperate with BAWSCA to improve water supply reliability. As an example of such cooperation, San Francisco may invite a representative of BAWSCA to attend and participate in meetings with third parties for development of dry year water supplies. If San Francisco does not invite a BAWSCA representative to attend a specific scheduled meeting, it will promptly (within 30 days of any such meeting) provide BAWSCA with a written or oral report on the meeting, including any decisions reached at it, as well as information about planned subsequent meetings. Progress in securing dry year water supplies will be reported to the SFPUC and the BAWSCA board of directors during the first quarter of each calendar year.

3.12 Wheeling of Water from Outside SFPUC System

Subject to the Wheeling Statute, the SFPUC will not deny use of Regional Water System unused capacity for wheeling when such capacity is available for wheeling purposes during

periods when the SFPUC has declared a water shortage emergency under Water Code Section 350 if the following conditions are met:

A. The transferor pays reasonable charges incurred by the SFPUC as a result of the wheeling, including capital, operation, maintenance, administrative and replacement costs (as such are defined in the Wheeling Statute).

B. Wheeled water that is stored in the Regional Water System spills first.

C. Wheeled water will not unreasonably: (1) impact fish and wildlife resources in Regional Water System reservoirs; (2) diminish the quality of water delivered for consumptive uses; or (3) increase the risk of exotic species impairing Regional Water System operations. The transferor may at its own expense provide for treatment to mitigate these effects.

D. Priority will be given to wheeling by Wholesale Customers or BAWSCA over arrangements for third-party public entities.

3.13 Limits on New Customers

A. New Wholesale Customers Prior to December 31, 2018. Until December 31, 2018, San Francisco will not enter into contracts to supply water to any entity other than a Wholesale Customer (whether permanent or temporary, firm or interruptible) unless:

1. It completes any necessary environmental review under CEQA of the proposed new wholesale water service obligations as provided in Section 4.07;

2. It concurrently completes any necessary environmental review under CEQA as provided in Section 4.07 and commits to make both San Jose and Santa Clara permanent customers with Individual Supply Guarantees equal to at least 9 MGD; and

3. This Agreement is amended to incorporate any commitments to proposed new wholesale customers and to San Jose and Santa Clara, and to address the effects, if any, of the new customer(s) on water supply reliability, water quality and cost to existing customers of the Regional Water System.

B. New Wholesale Customers After December 31, 2018. As of January 1, 2019, San Francisco will not enter into contracts to supply water to any entity other than a Wholesale Customer (whether permanent or temporary, firm or interruptible) unless:

1. It completes any necessary environmental review under CEQA of the proposed new wholesale water service obligations as provided in Section 4.07;

2. It concurrently completes any necessary environmental review under CEQA as provided in Section 4.07 and commits to make both San Jose and Santa Clara permanent customers with Individual Supply Guarantees equal to at least 9 MGD;

3. Doing so increases the reliability of the Regional Water System; and

4. This Agreement is concurrently amended (a) to reflect that increased reliability by means of an increased commitment by San Francisco to deliver water during Droughts and (b) to address the effects, if any, of the new customer(s) on water supply, water quality and cost to existing customers of the Regional Water System.

C. **New Retail Customers.** San Francisco may enter into new retail water service obligations outside of the City and County of San Francisco:

1. Only in Alameda, San Mateo, Santa Clara, San Joaquin and Tuolumne Counties;

2. That are within or immediately adjacent to areas in which it currently serves other Retail Customers; and

3. Until the aggregate additional demand represented by the new retail customers reaches 0.5 MGD.

The limitations on serving new Retail Customers described in this subsection do not apply to historical obligations to supply water that may be contained in prior agreements between the SFPUC or its predecessor the Spring Valley Water Company, and individual users or property owners located adjacent to Regional Water System transmission pipelines.

D. **Water Exchanges and Cost Sharing Agreements with Other Water Suppliers.** Subject to completion of necessary environmental review under CEQA, San Francisco may at any time enter into water exchanges or cost sharing agreements with other water suppliers to enhance dry year or normal year water deliveries, provided that San Francisco cannot incur new water service obligations to such other water suppliers unless the requirements for taking on new wholesale customers in subsections A and B above are met.

3.14 Measurement of Water

A. The parties recognize that continuous and accurate measurement of water deliveries to and from the Regional Water System and maintenance of complete and accurate records of those measurements is necessary (1) for the costs of the Regional Water System to be allocated in accordance with this Agreement, (2) for implementation of other provisions of this Agreement, and (3) for effective operation and maintenance of a water system serving a large urbanized region.

B. It is the responsibility of the SFPUC to obtain and record these measurements. To do so, the SFPUC shall install, maintain and operate measuring and recording equipment at the following locations: (1) inputs to the Regional Water System from all water sources ("System Input Meters"), (2) internal flow meters to support operation of the Regional Water System ("In-Line Meters"), (3) deliveries to the City at the San Francisco-San Mateo County line ("County-Line Meters") and to three reservoirs in San Francisco ("In-City Terminal Reservoir Meters"), (4) deliveries to SFPUC Retail Customers located outside the boundaries of the City, and (5) deliveries to the Wholesale Customers, as described and illustrated in Attachment J.

C. The SFPUC shall inspect, test, service, and calibrate the measuring and recording equipment installed at the locations described in subsection B and will repair or replace them when necessary, in order to ensure that their accuracy is consistent with specifications provided in Attachment J.

D. The SFPUC shall continue to contract with a qualified independent metering consultant to perform periodic inspection, testing, servicing and calibration of the County-Line Meters, the In-City Terminal Reservoir Meters, and the System Input and In-Line Meters described in Attachment J, as well as the portion of the SFPUC's Supervisory Control and Data Acquisition (SCADA) system that utilizes the flow signals produced by that measuring and recording equipment. The method, schedule and frequency for calibration and maintenance of the County-Line Meters and the In-City Terminal Reservoir Meters are specified in Attachment J. The SFPUC shall provide copies of the metering consultant's reports to BAWSCA.

E. System Input Meters measure water deliveries into the Regional Water System from sources such as Hetch Hetchy and the SFPUC's water treatment plants. System Input Meters also measure deliveries from the Regional Water System to outside sources or from

such sources to the Regional Water System through interties with the Santa Clara Valley Water District and the East Bay Municipal Utility District. In-Line Meters measure internal system flows and are located on the Bay Division Pipelines and other main transmission pipelines. These meters are collectively referred to as the "System Input and In-line Meters." Similar to the County-Line Meters, the System Input and In-Line Meters have secondary metering equipment, such as differential pressure transmitters and flow recorders. The System Input and In-Line Meters, and all associated secondary metering equipment, shall be calibrated and maintained according to the method, schedule, and frequency specified in the Procedures Manual described in subsection G, below.

F. The locations of the smaller and more numerous meters described in subsection B (4) and (5) are not illustrated in Attachment J; however, they are also critical in the determination of cost allocations, and accordingly require continued maintenance and calibration. It is the responsibility of the SFPUC to maintain the accuracy of these meters and their secondary metering equipment.

G. The SFPUC will prepare a Procedures Manual which will describe in detail the procedures for periodic inspection, testing, servicing and calibration of the measuring and recording equipment described in subsection B. Once the Procedures Manual is completed, the SFPUC and BAWSCA may agree that it should supersede some or all of the requirements in Attachment J regarding the County-Line and the In-City Terminal Reservoir Meters. Unless and until such an agreement is reached and documented, however, the requirements in Attachment J, Section D will continue in force as minimum standards for meter maintenance and calibration of the County-Line and In-City Terminal Reservoir Meters (subject to modification under the circumstances described in Attachment J, Section A.4).

H. If BAWSCA and the SFPUC are unable to agree on the water use calculations required by Attachment J for a particular year, the Wholesale Customers may file a demand for arbitration challenging the SFPUC's determination of the Wholesale Revenue Requirement for that year on the basis of its reliance on disputed water use calculations. Such a challenge must be brought in the manner and within the time specified in Section 8.01.

3.15 New Sources of Water Supply to Maintain Supply Assurance

A. Urgent Reductions of Existing Surface Water Supplies. Sudden and unanticipated events may require San Francisco to act promptly to protect the health, safety and

economic well-being of its Retail and Wholesale Customers. Such sudden events include, but are not limited to drought, earthquakes, terrorist acts, catastrophic failures of facilities owned and operated by San Francisco, and other natural or man-made events. If such events diminish San Francisco's ability to maintain the Supply Assurance, San Francisco may increase the Wholesale Revenue Requirement to pay for planning, evaluation and implementation of replacement sources of supply when such needs arise and without the prior approval of the Wholesale Customers. San Francisco will keep the Wholesale Customers informed of actions being taken under this subsection, progress made, and contingency actions the Wholesale Customers may need to consider taking. To the extent appropriate and applicable, San Francisco will act in accordance with Section 3.11 and the ERRP. Nothing in this subsection limits San Francisco's obligations under Section 3.11 to pursue additional sources of supply to augment supplies available during drought.

B. **Non-Urgent Reductions of Existing Surface Water Supplies.** Climate change, regulatory actions and other events may impact San Francisco's ability to maintain the Supply Assurance from its existing surface water supplies, but on timescales long enough to permit San Francisco to collaborate with its Wholesale Customers on how best to address possible impacts to water supply. If such events diminish San Francisco's ability to maintain the Supply Assurance, San Francisco may increase the Wholesale Revenue Requirement to pay for planning, evaluation and implementation of replacement sources of supply when such needs arise and without the prior approval of the Wholesale Customers. San Francisco will keep the Wholesale Customers informed of actions being taken under this subsection, progress made, and contingency actions the Wholesale Customers may need to consider taking. San Francisco will solicit input and recommendations from BAWSCA and the Wholesale Customers, and take those recommendations into consideration. Prior to Commission approval of plans or taking other actions that would impact the Wholesale Revenue Requirement, San Francisco will hold a public hearing to receive written and oral comments. Nothing in this subsection modifies San Francisco's obligation to maintain the ability to provide the Supply Assurance under this Agreement.

3.16 New Sources of Water Supply to Increase Supply Assurance

A. **Surface Water Supplies From Existing Watersheds After 2018.** The Commission action in SFPUC Resolution Number 08-0200, adopted October 30, 2008 requires certain decisions by San Francisco regarding whether to supply more than 265 MGD from its

watersheds following 2018. Such decisions are to be made by December 31, 2018, subject to the exercise of San Francisco's retained CEQA discretion in Section 4.07. San Francisco's future decisions may include an offer to increase the Supply Assurance at the request of some or all of its Wholesale Customers. Costs associated with providing additional water from its existing water supplies in San Mateo, Santa Clara, Alameda, Tuolumne, and Stanislaus Counties shall be allocated to Wholesale and Retail Customers as described in Article 5.

B. **New Water Supplies.** If San Francisco seeks to develop additional water supplies from new sources to increase the Supply Assurance available to Wholesale Customers, studies and resulting water supply projects will be conducted jointly with BAWSCA under separate agreement(s) specifying the purpose of the projects, the anticipated regional benefits and how costs of studies and implementation will be allocated and charged. Nothing in this Agreement shall serve as precedent for the allocation of such new supply capital costs between Retail and Wholesale Customers or associated operational expenses, which shall only occur following approval of both parties and amendment of this Agreement, if necessary, under Section 2.03.

3.17 Westside Basin Conjunctive Use Program

Subject to completion of necessary CEQA review as provided in Section 4.07, the SFPUC may enter into an agreement with the cities of Daly City and San Bruno and the California Water Service Company, South San Francisco Service Area ("Participating Pumpers") governing the operation of the South Westside Basin Conjunctive Use Program ("Program"), a WSIP Project. The Program would produce Regional benefits for all customers of the Regional Water System by making use of available groundwater storage capacity in the Southern portion of the Westside Basin through the supply of additional surface water ("In Lieu Water") to the Participating Pumpers from the Regional Water System, in exchange for a corresponding reduction in groundwater pumping at existing wells owned by the Participating Pumpers. The new groundwater supply that would accrue to storage as a result of delivery of In Lieu Water would then be recovered from the SFPUC basin storage account during water shortages using new SFPUC Regional Program wells operated by the Participating Pumpers and the SFPUC. Program annual operations and maintenance expenses and water supplies are expected to be allocated as follows:

A. All In Lieu Water delivered to the Participating Pumpers shall be (1) temporary and interruptible in nature and (2) at the sole discretion of the SFPUC based on the total volume of water available to the Regional Water System.

B. All In Lieu Water delivered to the Participating Pumpers shall be considered a delivery of water to storage and shall not be construed to affect or increase the Individual Supply Guarantees of these wholesale customers or to otherwise entitle them to any claim of water in excess of their Individual Supply Guarantees or their Interim Supply Allocations. Furthermore, Environmental Enhancement Surcharges authorized under Section 4.04 will not be applied by the SFPUC to any quantity of In Lieu Water that is delivered to the Participating Pumpers, but will instead be based solely on Participating Pumper water deliveries in excess of their respective Interim Supply Allocations.

C. Any operation and maintenance expenses incurred by the Participating Pumpers and the SFPUC that are related to the operation of Regional Program wells and related assets shall be included as Regional pumping expenses under Section 5.05.B and included as part of the Wholesale Revenue Requirement. For rate setting purposes, estimated Regional Program operation and maintenance expenses shall be used as set forth in Section 6.01. Operation and maintenance expenses associated with the Participating Pumpers' existing wells that do not provide Regional benefits shall not be included in the Wholesale Revenue Requirement. On a case-by-case basis, the SFPUC may include Participating Pumper existing well operation and maintenance expenses in the Wholesale Revenue Requirement provided that such expenses (1) are solely attributable to Regional Program operations and (2) are not caused by the Participating Pumper's failure to operate and maintain its existing wells in a reasonable and prudent manner consistent with water utility industry standards.

D. The SFPUC will audit operation and maintenance expenses submitted by the Participating Pumpers for reimbursement to confirm that such costs were incurred as a result of operating Regional Program wells and related assets. Costs associated with the use of Program facilities for Direct Retail or Direct Wholesale purposes, or that do not otherwise provide Regional benefits, shall not be included in the Wholesale Revenue Requirement. The SFPUC is responsible for resolving disputes with the Participating Pumpers concerning expense allocations. Program expense documentation, including documentation of negotiation and settlement of disputed costs, will be available for review during the Compliance Audit described

in Section 7.04. The Wholesale Customers may dispute the SFPUC's resolution of expense allocations through the arbitration provisions in Section 8.01 of this Agreement.

E. The SFPUC may direct the Participating Pumpers to recover water from the SFPUC basin storage account for any type of shortage referenced in Section 3.11. Water recovered from the SFPUC basin storage account using Regional Program wells may be used for (1) the benefit of all Regional Water System customers; (2) Retail Customers; or (3) one or more of the Participating Pumpers. The Wholesale Revenue Requirement shall only include operation and maintenance expenses incurred due to the operation of Program wells for Regional benefits.

F. All water recovered from the SFPUC basin storage account by the Participating Pumpers and by the SFPUC for delivery to Retail Customers during Shortages caused by Drought shall be used to free up a comparable volume of surface water from the Regional Water System for allocation in accordance with the Tier 1 Shortage Plan.

G. If the Program is terminated for any reason, including breach of the Program agreement by the Participating Pumpers or SFPUC, or due to regulatory action or legal action, then

1. Any water remaining SFPUC Regional storage account shall be used for the benefit of all customers of the Regional Water System;

2. Outstanding eligible operation and maintenance expenses, including costs incurred during recovery of remaining stored water, will be allocated as provided in this section; and

3. The Wholesale Customers will be credited with their share of proceeds from disposition of Program facilities or reimbursed their share of such capital costs for any Program facilities which are retained by the SFPUC for Direct Retail benefit and not used for the benefit of the Wholesale Customers, on the basis of (a) original cost less depreciation and outstanding related Indebtedness or (b) original cost less accumulated depreciation for revenue funded Regional Program facilities.

Article 4. Implementation of Interim Supply Limitation.

4.01 Interim Supply Limitation Imposed by SFPUC

In adopting the WSIP in Res. No. 08-0200, the Commission included full implementation of all proposed WSIP capital improvement projects to achieve level of service goals relating to public health, seismic safety, and delivery reliability, but decided to adopt a water supply element that includes the Interim Supply Limitation. This article describes how the parties will implement the Interim Supply Limitation imposed by the SFPUC between the Effective Date and December 31, 2018.

4.02 Retail and Wholesale Customer Allocations Under Interim Supply Limitation

The Interim Supply Limitation is allocated as follows between Retail and Wholesale Customers:

Retail Customers' allocation:	81 MGD
Wholesale Customers' allocation:	184 MGD

The Wholesale Customers' collective allocation of 184 MGD under the Interim Supply Limitation includes the demand of the cities of San Jose and Santa Clara, whose demand is not included in the Supply Assurance, as provided in Section 3.02.B. By December 31st, 2010, the Commission will establish each Wholesale Customer's Interim Supply Allocation at a public meeting.

4.03 Transfers of Interim Supply Allocations

A. Any Wholesale Customer, including Hayward, may transfer a portion of its Interim Supply Allocation to one or more other Wholesale Customers, as provided in this section. All Wholesale Customers are also eligible transferees, including California Water Service Company up to its Individual Supply Guarantee.

B. Transfers of a portion of an Interim Supply Allocation must be prospective. The duration of a transfer cannot be less than the balance of the fiscal year. The minimum quantity that may be transferred is 1/10th of a MGD.

C. Transfers of portions of Interim Supply Allocations are subject to approval by the SFPUC. SFPUC review is limited to determining (1) whether a proposed transfer complies with

the Act, and (2) whether the affected facilities in the Regional Water System have sufficient capacity to accommodate delivery of the increased amount of water to the proposed transferee.

D. The participants in a proposed transfer shall provide notice to the SFPUC specifying the amount of the Interim Supply Allocation proposed to be transferred and the proposed effective date of the transfer, which shall not be less than 60 days after the notice is submitted to the SFPUC. The SFPUC may require additional information reasonably necessary to evaluate the operational impacts of the transfer. The SFPUC will not unreasonably withhold or delay its approval; if the SFPUC does not act on the notice within 60 days, the transfer will be deemed to have been approved.

E. Within 30 days after the transfer has become effective, both the transferor and the transferee will provide written notice to the SFPUC and BAWSCA.

F. Transfers of Interim Supply Allocations shall continue in effect until the earlier of (1) delivery of written notice to the SFPUC by the transfer participants that the transfer has been rescinded or (2) December 31, 2018.

4.04 Environmental Enhancement Surcharge

A. **Establishment of Environmental Enhancement Surcharge.** Beginning with wholesale water rates for fiscal year 2011-2012, and continuing for the duration of the Interim Supply Limitation, the Commission will establish the Environmental Enhancement Surcharge concurrently with the budget-coordinated rate process set forth in Article 6 of this Agreement. The monetary amount of the Environmental Enhancement Surcharge per volume of water, such as dollars per acre-foot, will be equivalent for Retail Customer use in excess of 81 MGD and Wholesale Customer use in excess of 184 MGD. The Environmental Enhancement Surcharge will be simple to calculate so that Wholesale Customers can estimate potential surcharges for budgeting purposes and establish retail rates within their service areas.

B. **Application of Environmental Enhancement Surcharge.** Beginning in fiscal year 2011-12, the Environmental Enhancement Surcharge will be levied only if and when combined Retail Customer and Wholesale Customer purchases exceed the Interim Supply Limitation of 265 MGD and if the fund described in subsection D below has been established by the San Francisco Board of Supervisors. In that event, the Environmental Enhancement Surcharge will apply to Retail Customers for use in excess of 81 MGD and to individual

Wholesale Customers for use in excess of their Interim Supply Allocations established by the Commission pursuant to Section 4.02.

1. Environmental Enhancement Surcharges related to the Retail Customers' use in excess of their 81 MGD Retail Customer Allocation will be paid by the SFPUC, and no portion of such surcharges may be allocated to Wholesale Customers. The method of recovering the Environmental Enhancement Surcharges imposed upon Retail Customers shall be within the sole discretion of the SFPUC.

2. Environmental Enhancement Surcharges related to the individual Wholesale Customers' use in excess of their respective Interim Supply Allocations will be paid to the SFPUC by individual Wholesale Customers.

C. **Collection of Environmental Enhancement Surcharge**. Notwithstanding the budget-coordinated rate setting process contemplated in Article 6 of this Agreement, the Environmental Enhancement Surcharge for any given year will be determined retrospectively based on actual annual usage during the fiscal year in excess of the Interim Supply Allocation and paid in equal monthly installments over the remainder of the immediately following fiscal year.

D. **Establishment of Fund for Environmental Enhancement Surcharge Proceeds**. Environmental Enhancement Surcharges paid by the SFPUC and by Wholesale Customers will be placed into a restricted reserve fund. The SFPUC will request the San Francisco Board of Supervisors to establish this fund by ordinance and, if adopted, the fund will be subject to the following restrictions:

1. Interest earnings will stay in the reserve fund.

2. The reserve fund shall (a) be subject to automatic appropriation; (b) require unexpended and unencumbered fund balances to be carried forward from year to year; and (c) not be transferred to the San Francisco General Fund.

3. The reserve fund may be used only for specific environmental restoration and enhancement measures for the Sierra and local watersheds, such as those included in the Watershed Environmental Improvement Program.

4. Environmental Enhancement Surcharge proceeds shall be expended in an expeditious manner. Any Environmental Enhancement Surcharge proceeds that remain in

the reserve fund as of December 31, 2018 shall be used to complete projects previously approved under subsection E. Upon completion of the identified projects, the balance of any unexpended sums in the reserve fund shall be distributed to BAWSCA and the SFPUC in proportion to the total amount of surcharges assessed to the Wholesale and Retail Customers, respectively.

E. **Use of Environmental Enhancement Surcharge Proceeds**. Specific uses of Environmental Enhancement Surcharges will be decided by the SFPUC and BAWSCA General Managers following input from environmental stakeholders and other interested members of the public. If parties are unable to agree, then they will jointly select a third person to participate in making the decision.

4.05 San Jose/ Santa Clara Interim Supply Allocation and Process for Reduction/ Termination.

San Francisco will supply a combined annual average of 9 MGD to the cities of San Jose and Santa Clara through 2018. Water supplied by San Francisco may only be used in the existing defined service areas in the northern portions of San Jose and Santa Clara shown on Attachment Q. San Francisco may reduce the quantity of water specified in this section when it establishes the Interim Supply Allocations for Wholesale Customers in Section 4.02. The establishment of Interim Supply Allocations for San Jose and Santa Clara shall not be considered a reduction of supply within the meaning of this section, provided that the Interim Supply Allocations assigned to San Jose and Santa Clara do not effect a reduction greater than the aggregate average reduction in Individual Supply Guarantees for Wholesale Customers that have such guarantees. The application of Interim Supply Allocations to San Jose and Santa Clara is subject to the following provisions:

A. In December 2010 and in each December thereafter through 2017, the SFPUC shall prepare and the Commission shall consider, at a regularly scheduled public meeting, a Water Supply Development Report detailing progress made toward meeting the Interim Supply Limitation by June 30, 2018.

B. The annual Water Supply Development Report shall be based on water purchase projections and work plans for achieving the Interim Supply Limitation in the Retail and Wholesale Service Areas. The projections and work plans will be prepared by the SFPUC for

the Retail Customers and by BAWSCA for the Wholesale Customers, respectively, and submitted to the Commission in June of each year beginning in 2010.

C. If the Commission finds that the projections in the Water Supply Development Report show that the Interim Supply Limitation will not be met by June 30, 2018, as a result of Wholesale Customers' projected use exceeding 184 MGD, the Commission may issue a conditional five-year notice of interruption or reduction in supply of water to San Jose and Santa Clara.

D. Upon issuance of the conditional notice of interruption or reduction, the SFPUC will prepare a new analysis of water supply that will be utilized by the San Francisco Planning Department in its preparation of any necessary documentation under CEQA pursuant to Section 4.07 on the impacts of interrupting or reducing service to San Jose and Santa Clara.

E. Such notice of interruption or reduction will be rescinded if the Commission finds, based upon a subsequent annual Water Supply Development Report, that sufficient progress has been made toward meeting the Interim Supply Limitation or projections show that the Interim Supply Limitation will be met by June 30, 2018.

F. In no case shall any interruption or reduction of service to San Jose or Santa Clara pursuant to this section become effective less than two years from the completion of the CEQA process (not including resolution of any appeals or litigation) or five years from the notice, whichever is longer. If the five-year notice is issued after 2013, such interruption or reduction would occur after 2018.

G. If deliveries to San Jose and Santa Clara are interrupted, existing turnout facilities to San Jose and Santa Clara will remain in place for possible use during emergencies.

H. San Francisco and the cities of San Jose and Santa Clara will cooperate with BAWSCA and the Santa Clara Valley Water District in the identification and implementation of additional water sources and conservation measures for the cities' service areas that are relevant to the water supply and the possible offer of permanent status for the two cities by the SFPUC.

4.06 <u>San Francisco Decisions in 2018 Regarding Future Water Supply</u>

A. By December 31, 2018, San Francisco will have completed any necessary CEQA review pursuant to Section 4.07 that is relevant to making San Jose and Santa Clara

permanent customers of the Regional Water System and will decide whether or not to make San Jose and Santa Clara permanent customers of the Regional Water System. San Francisco will make San Jose and Santa Clara permanent customers only if, and to the extent that, San Francisco determines that Regional Water System long term water supplies are available. In the event that San Francisco decides to afford permanent status to San Jose and Santa Clara, this Agreement will be amended pursuant to Section 2.03.

B. By December 31, 2018, San Francisco will have completed any necessary CEQA review pursuant to Section 4.07 and will decide how much water if any, in excess of the Supply Assurance it will supply to Wholesale Customers from the Regional Water System to meet their projected future water demands until the year 2030, and whether to offer a corresponding increase in the Supply Assurance as a result of its determination.

4.07 Retained Discretion of SFPUC and Wholesale Customers

A. This Agreement contemplates discretionary actions that the SFPUC and the Wholesale Customers may choose to take in the future that could result in physical changes to the environment ("Discretionary Actions"). The Discretionary Actions include decisions to:

1. Develop additional or alternate water resources by the SFPUC or one or more Wholesale Customers;

2. Implement the physical facilities comprising the WSIP by December 31, 2015;

3. Approve wheeling proposals by Wholesale Customers;

4.. Approve new wholesale customers and water exchange or cost sharing agreements with other water suppliers;

5. Provide additional water to San Jose and/or Santa Clara;

6. Offer permanent status to San Jose and/or Santa Clara;

7. Reduce or terminate supply to San Jose and/or Santa Clara;

8. Provide additional water to Wholesale Customers in excess of the Supply Assurance to meet their projected future water demands; and

9. Offer a corresponding volumetric increase in the Supply Assurance.

The Discretionary Actions may require the SFPUC or Wholesale Customers to prepare environmental documents in accordance with CEQA prior to the SFPUC or the Wholesale Customers determining whether to proceed with any of the Discretionary Actions. Accordingly, and notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement commits the SFPUC or the Wholesale Customers to approve or carry out any Discretionary Actions that are subject to CEQA. Furthermore, the SFPUC's or Wholesale Customers' decisions to approve any of these Discretionary Actions are subject to the requirement that San Francisco and each Wholesale Customer, as either a "Lead Agency" (as defined in Section 21067 of CEQA and Section 15367 of the CEQA Guidelines) or a "Responsible Agency" (as defined in Section 21069 of CEQA and Section 15381 of the CEQA Guidelines) shall have completed any CEQA-required environmental review prior to approving a proposed Discretionary Action.

B. In considering any proposed Discretionary Actions, the SFPUC and Wholesale Customers retain absolute discretion to: (1) make such modifications to any of the proposed Discretionary Actions as may be necessary to mitigate significant environmental impacts; (2) select feasible alternatives to the proposed Discretionary Actions that avoid significant adverse impacts; (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts as part of the decision to approve the Discretionary Actions; (4) balance the benefits of the proposed Discretionary Actions against any significant environmental impacts before taking final actions to approve the proposed Discretionary Actions if such significant impacts cannot otherwise be avoided; or (5) determine not to proceed with the proposed Discretionary Actions.

Article 5. Wholesale Revenue Requirement

5.01 Scope of Agreement

This Article shall be applicable only to the water rates charged by San Francisco to the Wholesale Customers. Nothing contained in this Agreement shall limit, constrain, or in any way affect the rates which San Francisco may charge for water sold to Retail Customers or the methodology by which such rates are determined.

5.02 General Principles

This Article sets forth the method by which the Wholesale Customers' collective share of expenses incurred by the SFPUC in delivering water to them will be determined. This collective share is defined as the "Wholesale Revenue Requirement."

A. The SFPUC currently operates several enterprises, including the Water Enterprise, the Wastewater Enterprise, and the Hetch Hetchy Enterprise.

B. The Wastewater Enterprise is responsible for treating sewage within San Francisco and provides no benefit to the Wholesale Customers.

C. The Hetch Hetchy Enterprise is responsible for storing and transmitting water to the Water Enterprise, generating hydroelectric power and transmitting it to San Francisco, generating electric power within San Francisco, and distributing electricity and steam heat within San Francisco. Its water supply operations provide benefits to the Wholesale Customers.

D. The Water Enterprise delivers water to both Retail Customers, which are located both within and outside San Francisco, and to the Wholesale Customers, all of which are located outside San Francisco.

E. This Article implements two general principles as follows: (1) the Wholesale Customers should not pay for expenses of SFPUC operations from which they receive no benefit and (2) the Wholesale Customers should pay their share of expenses incurred by the SFPUC in delivering water to them on the basis of Proportional Annual Use unless otherwise explicitly provided in this Agreement.

F. To implement these general principles, the Wholesale Revenue Requirement will consist of, and be limited to, the Wholesale Customers' shares of the following categories of expense:

1. Capital cost recovery of Water Enterprise Existing Assets, and Hetch Hetchy Enterprise Existing Assets classified as Water-Only and the Water-Related portion of Joint assets (Section 5.03)

2. Contribution to the capital cost of Water Enterprise New Regional Assets (Section 5.04)

3. Water Enterprise operation and maintenance expenses, including power purchased from the Hetch Hetchy Enterprise that is used in the operation of the Water Enterprise (Section 5.05)

4. Water Enterprise administrative and general expenses (Section 5.06)

5. Water Enterprise property taxes (Section 5.07)

6. The Water Enterprise's share of the Hetch Hetchy Enterprise's operation and maintenance, administrative and general, and property tax expenses (Section 5.08)

7. The Water Enterprise's share of the Hetch Hetchy Enterprise's capital cost of New Assets classified as Water-Only and the Water-Related portion of Joint assets (Section 5.09)

In each of these cost categories, Direct Retail Expenses will be allocated entirely to Retail Customers. Direct Wholesale Expenses will be allocated entirely to the Wholesale Customers. Regional Expenses will be allocated between Retail Customers and Wholesale Customers as provided in this Article.

G. For purposes of establishing the rates to be charged Wholesale Customers, expenses will be based on the budget for, and estimates of water purchases in, the following fiscal year, as provided in Article 6. For purposes of accounting, the Wholesale Revenue Requirement will be determined on the basis of actual expenses incurred and actual water use, as provided in Article 7.

H. In addition, rates charged to Wholesale Customers may include the Wholesale Customers' contribution to a Wholesale Revenue Coverage Reserve, as provided in Section 6.06, which is not included in the Wholesale Revenue Requirement itself.

5.03 Capital Cost Recovery - Existing Regional Assets

A. SFPUC has previously advanced funds to acquire or construct Existing Assets used and useful in the delivery of water to both Wholesale Customers and Retail Customers. The parties estimate that the Wholesale Customers' share of the net book value of these assets, as of the expiration of the 1984 Agreement on June 30, 2009, will be approximately $366,734,424, as shown on Attachment K-1.

B. In addition, SFPUC has also previously advanced funds received from Retail Customer revenues to acquire or construct assets included in Construction-Work-In-Progress (CWIP) as of June 30, 2009. The parties estimate that the Wholesale Customers' share of the book value of these revenue funded capital expenditures, as of the expiration of the 1984 Agreement on June 30, 2009, will be approximately $15,594,990, as shown on Attachment K-2. The Wholesale Customers shall pay their share of the cost of Existing Assets and revenue-funded CWIP by amortizing the amounts shown on Attachment K-1 and Attachment K-2 over 25 years at an interest rate of 5.13 percent. The amounts to be included in the Wholesale Revenue Requirement pursuant to this section shall be the sum of the annual principal and interest amounts shown on Attachments K-3 (for Water Enterprise Regional Assets and the one Direct Wholesale Asset) and K-4 (for Hetch Hetchy Enterprise Water-Only Assets and the Water-Related portion [45 percent] of Joint assets) calculated on the basis of monthly amortization of principal as set forth on Attachments K-3 and K-4.

C. In addition, the Commission has previously appropriated funds, advanced through rates charged to Retail Customers, for construction of capital projects. Some of these projects are active, and have unexpended balances of appropriated funds that are not included in CWIP as of June 30, 2009. These projects, and the associated balances, are shown on Attachment K-5. Expenditures of funds from these balances during FY 2009-10, FY 2010-11 and FY 2011-12 will be reviewed in FY 2012-13. The SFPUC will prepare a report showing the amount expended in each year on each project and the total expended during all years on all projects that are categorized as Regional or, in the case of Hetch Hetchy Enterprise, are categorized as either Water-Only or Joint. The wholesale share of that total will be determined using the allocation principles in this Agreement based on Proportional Water Use during those three years. The result, plus accrued interest at the rate specified in Section 6.05.B, will be calculated by the SFPUC and its calculation reviewed by the Compliance Auditor as part of the Compliance Audit for FY 2012-13. The audited total will be paid based on a schedule of level annual principal and interest amounts over ten years at an interest rate of 4.00%, calculated on

a monthly amortization basis. All or any portion of the balance may be prepaid. The first year's payment will be included in the Wholesale Revenue Requirement for FY 2014-15.

D. The parties agree that the Wholesale Customers' share of the net book values of Existing Regional Assets as of June 30, 2008 as shown on Attachment K-1 are accurate. The compliance audit conducted on the calculation of the FY 2008-09 Suburban Revenue Requirement required by the 1984 Agreement will determine the actual amounts of depreciation on, and capital additions to, plant in service during that fiscal year. Those amounts will be compared to the corresponding estimates shown on Attachments K-1 and K-2. The differences will be added to or subtracted from the estimated asset values shown on Attachments K-1 and K-2 and the amortization schedules in Attachments K-3 and K-4 will be recalculated. The wholesale allocation factors shall be fixed at 70.1% for the Water Enterprise Existing Assets and 64.2% for Hetch Hetchy Enterprise Existing Assets for both the preliminary and final payment schedules. The SFPUC will prepare and provide to the Wholesale Customers revised Attachments K-1 through K-4 based on the Wholesale Customers' share of the net book value of the assets placed in service as of June 30, 2009 used to provide water service to the Wholesale Customers and the net book value of revenue-funded CWIP expended as of June 30, 2009. The revised Attachments K-1 through K-4 shall be approved by the General Manager of the SFPUC and the General Manager/CEO of BAWSCA and will be substituted for the original Attachments K-1 through K-4.

E. The original Attachments K-1 through K-4, based on estimates, shall be used for estimating the Wholesale Revenue Requirement for the fiscal year beginning July 1, 2009. The revised Attachments, based on audited actuals, shall be used to determine the actual Wholesale Revenue Requirement for FY 2009-10 and to determine the Wholesale Revenue Requirement(s) in all subsequent years, except as may be provided elsewhere in this Agreement.

F. The Wholesale Customers, acting through BAWSCA, may prepay the remaining unpaid Existing Assets principal balance, in whole or in part, at any time without penalty or early payment premium. Any prepayments will be applied in the month immediately following the month in which the prepayment is made and the revised monthly amount(s) will be used to calculate the Wholesale Revenue Requirement. Any partial prepayments must be in an amount at least equal to $10 million. In the event of a partial prepayment, an updated schedule for the remaining payments shall be prepared reflecting the unpaid balance after prepayment,

amortized through the end of FY 2034, calculated as provided in this section. The updated schedule, approved by the General Manager of the SFPUC and the General Manager/CEO of BAWSCA, will be substituted for Attachment K-3 and/or Attachment K-4.

5.04 Capital Cost Contribution - New Regional Assets

A. **Debt-Funded Capital Additions**. The Wholesale Customers shall pay the wholesale share of Net Annual Debt Service for New Regional Assets. The Regional projects in the WSIP are identified in Attachment L-1.

1. The amount of Net Annual Debt Service for New Regional Assets will be determined for each series of Indebtedness issued. Until the proceeds of a particular series are Substantially Expended, the amount attributable to specific projects will be based on the expected use of proceeds shown in the "Certificate Regarding Use of Proceeds" executed by the SFPUC General Manager on behalf of the Commission in connection with the sale of the Indebtedness, provided such certificate identifies the use of proceeds at a level of detail equivalent to that shown on Attachment L-2, which is a copy of the certificate prepared for the 2006 Revenue Bonds, Series A. If a certificate does not identify the use of proceeds at that level of detail, the SFPUC General Manager shall prepare and execute a separate certificate which does identify the use of proceeds at the level of detail shown on Attachment L-2 and deliver it to BAWSCA within 15 days from the closing of the sale of the Indebtedness.

2. After the proceeds of a series are Substantially Expended, the SFPUC General Manager will prepare and execute a certificate showing the actual expenditure of proceeds at a level of detail equivalent to the initial General Manager certificate. The resulting allocation of Net Debt Service to New Regional Assets for a series of bonds will be used in the fiscal year in which the proceeds have been Substantially Expended and thereafter. Differences between the amount of Net Debt Service paid by Wholesale Customers prior to that year and the amount of Net Debt Service that they should have paid during that time based on the actual expenditure of proceeds will be taken into account in calculation of the balancing account for the fiscal year in which the proceeds were Substantially Expended. The application of the remaining proceeds shall be proportionate to the allocation of the Net Debt Service to New Regional Assets.

3. The Wholesale Customers' share of Net Annual Debt Service for the New Regional Assets that are categorized as Direct Wholesale will be 100 percent. (None of the

projects in the WSIP are categorized as Direct Wholesale.) The Wholesale Customers' share of Net Annual Debt Service for all other New Regional Assets will be determined each year and will be equal to the Wholesale Customers' Proportional Annual Use.

4. If Indebtedness is issued by the SFPUC to refund the 2006 Revenue Bonds, Series A or to refund any other long-term Indebtedness issued after July 1, 2009, the Net Annual Debt Service attributable to proceeds used for refunding will be allocated on the same basis as the Indebtedness being refunded.

5. The SFPUC will prepare an annual report showing for each issue of Indebtedness and through the most recently completed fiscal year: (1) net financing proceeds available to pay project costs, (2) actual earnings on proceeds, (3) actual expenditures by project. The report shall be substantially in the form of Attachment L-3 and shall be delivered to BAWSCA on or before November 30 of each year, commencing November 2009.

6. In addition to Net Debt Service, Wholesale Customers will pay a proportionate share of annual administrative costs associated with Indebtedness, such as bond trustee fees, credit rating agency fees, letter of credit issuer fees, San Francisco Revenue Bond Oversight Committee fees, etc., but only to the extent such fees are neither paid from proceeds of Indebtedness nor included in SFPUC operation and maintenance or administrative and general expenses.

B. **Revenue-Funded Capital Additions**. The Wholesale Customers shall pay the wholesale share of the appropriation contained in the SFPUC annual budget for each year to be used to acquire or construct New Regional Assets. If such appropriations are reimbursed from proceeds of Indebtedness, the Wholesale Customers will be credited for prior payments made under this Section 5.04.B.

The Wholesale Customers' share of the annual appropriation for revenue-funded New Regional Assets that are categorized as Direct Wholesale will be 100 percent. (None of the Repair and Replacement projects in the SFPUC's most recent capital improvement program updated on February 10, 2009, is categorized as Direct Wholesale.) The Wholesale Customers' share of the annual appropriation for all other revenue-funded New Regional Assets will be determined each year and will be equal to the Wholesale Customers' Proportional Annual Use in each fiscal year. The amount appropriated in each fiscal year for the wholesale share of New

Regional Assets shall be contributed to the Wholesale Capital Fund described in Section 6.08 and reported on and administered as shown in that section and Attachments M-1 through M-3.

5.05 Water Enterprise Operation and Maintenance Expenses

There are five categories of Water Enterprise Operation and Maintenance Expenses, described below:

A. Source of Supply

1. Description: This category consists of the costs of labor, supervision and engineering; materials and supplies; and other expenses incurred in the operation and maintenance of collecting and impounding reservoirs, dams, wells and other water supply facilities located outside San Francisco; watershed protection; water supply planning; and the purchase of water.

2. Allocation: Direct Retail expenses, including water supply planning for Retail operations (such as City Retail water conservation programs), will be assigned to the Retail Customers. Regional expenses will be allocated between Retail Customers and Wholesale Customers on the basis of Proportional Annual Use. Direct Wholesale expenses will be assigned to the Wholesale Customers. (As of the Effective Date there are no Direct Wholesale expenses in the Source of Supply category.)

B. Pumping

1. Description: This category consists of the costs of labor, supervision and engineering; materials and supplies; and other expenses incurred in the operation and maintenance of water pumping plants, ancillary structures and equipment and surrounding grounds; and fuel and power purchased for pumping water.

2. Allocation: Direct Retail expenses will be assigned to the Retail Customers. Regional expenses will be allocated between Retail Customers and Wholesale Customers on the basis of Proportional Annual Use. Direct Wholesale expenses will be assigned to the Wholesale Customers. (As of the Effective Date there are no Direct Wholesale expenses in the Pumping category.)

C. Treatment

1. Description: This category consists of the costs of labor, supervision and engineering; materials and supplies and other expenses incurred in the operation and

maintenance of water treatment plants and drinking water quality sampling and testing. The cost of water quality testing will not include expenses incurred on behalf of the Wastewater Enterprise. Any remaining costs, after adjusting for the Wastewater Enterprise, will be reduced by the amount of revenue received for laboratory analyses of any type performed for agencies, businesses and/or individuals other than the Water and Hetch Hetchy Enterprises.

2. Allocation: Direct Retail expenses will be assigned to the Retail Customers. Regional expenses will be allocated between Retail Customers and Wholesale Customers on the basis of Proportional Annual Use. Direct Wholesale expenses will be assigned to the Wholesale Customers. (As of the Effective Date there are no Direct Wholesale expenses in the Treatment category.)

D. **Transmission and Distribution**

1. Description: This category consists of the cost of labor, supervision and engineering; materials and supplies; and other expenses incurred in the operation and maintenance of transmission and distribution pipelines, appurtenances, meters (other than those expenses payable by individual Wholesale Customers pursuant to Section 5.10.C.3), distribution reservoirs storing treated water, craft shops and auto shops servicing vehicles used for operation and maintenance of the Regional Water System rather than for Direct Retail facilities, and miscellaneous facilities related to the transmission and distribution of water.

2. Allocation: Direct Retail Transmission and Distribution expenses will be assigned to the Retail Customers. Regional Transmission and Distribution expenses will be allocated between Retail and Wholesale Customers on the basis of Proportional Annual Use. Expenses incurred for the operation and maintenance of three terminal reservoirs, i.e., Sunset Reservoir (North and South Basins), University Mound Reservoir (North and South Basins), and Merced Manor Reservoir, as well as transmission pipelines delivering water to them, are classified as Regional expenses notwithstanding the location of the reservoirs within San Francisco. Direct Wholesale expenses will be assigned to the Wholesale Customers. (As of the Effective Date the only Direct Wholesale expenses in the Transmission and Distribution category are associated with the Palo Alto pipeline.)

E. **Customer Services**

1. Description: This category consists of labor; materials and supplies; and other expenses incurred for meter reading, customer record keeping, and billing and collection for the Water Enterprise.

2. Allocation: Customer Services expenses will be allocated among the Water Enterprise, the Wastewater Enterprise, and Hetch Hetchy Enterprise in proportion to the time spent by employees in Customer Services for each operating department/enterprise. The Water Enterprise's share of Customer Services expense will be allocated 98 percent to the Retail Customers and two percent to the Wholesale Customers, as illustrated on Attachment N-2, Schedule 1.

5.06 Water Enterprise Administrative and General Expenses

Administrative and General expenses consist of the Water Enterprise's share of the cost of general government distributed through the full-cost Countywide Cost Allocation Plan, the services of SFPUC support bureaus, Water Enterprise administrative and general expenses that cannot be directly assigned to a specific operating and maintenance category, and the cost of the Compliance Audit. These four subcategories, and the method by which costs in each are to be calculated and allocated, are as follows:

A. **Countywide Cost Allocation Plan**

1. Description: This subcategory consists of the Water Enterprise's share of the costs of San Francisco general government and other City central service departments which are not directly billed to the Water Enterprise or other operating departments. All San Francisco operating departments are assigned a prorated share of these costs through the full-cost Countywide Cost Allocation Plan (COWCAP) prepared annually by the San Francisco Controller.

2. Allocation: The Water Enterprise's assigned share of central government costs as shown in the annual full-cost COWCAP prepared by the San Francisco Controller, will be allocated between Retail Customers and Wholesale Customers on the basis of the composite percentage of the allocated expenses in the five categories of operation and maintenance expense described in Section 5.05. The composite wholesale percentage shown on Attachment N-2, Schedule 1 is 42.07 percent, derived by dividing the wholesale share of

Operation and Maintenance expenses ($46,573,883) by total Operation and Maintenance expenses ($110,700,133).

B. **Services of SFPUC Bureaus**

1. Description: This subcategory consists of the support services provided to the Water Enterprise by the SFPUC Bureaus, which presently consist of the General Manager's Office, Business Services, External Affairs, and Infrastructure Bureau. Business Services presently includes Financial Services, Information Technology Services, Human Resource Services, Fleet Management, and Customer Services.

2. Allocation: There are three steps involved in determining the Wholesale Customers' share of SFPUC Bureau costs.

a. Step One: Bureau expenses which have either been recovered separately or which provide no benefit to Wholesale Customers will be excluded. Examples of Bureau expenses recovered separately include (1) Customer Services expenses, which are recovered as provided in Section 5.05.E, and (2) Infrastructure expenses, which are assigned to individual projects and capitalized. An example of a Bureau expense that provides no benefit to Wholesale Customers is Information Technology Services expenses for support of the San Francisco Municipal Railway. In addition, the SFPUC will continue its practice of assigning City Attorney Office expenses charged to the General Manager's Office for projects or lawsuits that relate to only one enterprise directly to that enterprise. For example, costs related to a lawsuit involving the Wastewater Enterprise will not be assigned to the Water Enterprise.

b. Step Two: Bureau expenses adjusted as provided in Step One will be allocated among the Water Enterprise, the Wastewater Enterprise and the Hetch Hetchy Enterprise on the basis of the actual salaries of employees in each enterprise or department, as illustrated on Attachment N-2, Schedule 7.

c. Step Three: The amount allocated to the Water Enterprise through Step Two will be allocated between Retail Customers and Wholesale Customers on the basis of Proportional Annual Use.

C. **Water Enterprise Administrative and General**

1. Description: This category includes expenses incurred by the Water Enterprise that are not readily assignable to specific operating divisions. This category includes the following expenses:

a. Water Administration: This includes the costs of labor and other expenses of the administrative section of the Water Enterprise, supervision and engineering expenses, professional services, travel and training, equipment purchases, and materials and supplies not directly assignable to a specific operating unit.

b. Services Provided by Other City Departments: This includes charges of other San Francisco departments directly billed to the Water Enterprise administration by other San Francisco departments for services ordered by the Water Enterprise, such as legal services, risk management, telecommunications, employee relations, purchasing, mail services, and workers compensation claims paid.

c. Litigation and Claims Paid: This includes charges incurred for attorney services and claims and judgments paid in litigation arising from the operation of the Water Enterprise.

2. Allocation: In each of these three subcategories, expenses that benefit only Retail Customers will be excluded. For example, the cost of claims and judgments resulting from a break in or leak from pipelines or reservoirs in the Retail Service Area (with the exception of the three terminal reservoirs and pipelines delivering water to them) will be assigned to the Retail Customers. Remaining Water Enterprise Administrative and General expenses will be allocated between Retail Customers and Wholesale Customers on the basis of the composite percentage of allocated operation and maintenance expense categories described in Section 5.05.

D. **Compliance Audit**. The cost of the Compliance Audit described in Section 7.04 will be assigned 50 percent to the Retail Customers and 50 percent to the Wholesale Customers.

5.07 Water Enterprise Property Taxes

A. Description: This category consists of property taxes levied against property owned by San Francisco located in Alameda, San Mateo and Santa Clara counties and used and managed by the SFPUC.

B. Allocation: All property taxes paid, net of (1) reimbursements received from lessees and permit holders, and (2) refunds from the taxing authority, are Regional expenses. Net property taxes will be allocated between Retail Customers and Wholesale Customers on the basis of Proportional Annual Use.

5.08 Hetch Hetchy Enterprise Expenses

A. **Introduction**. There are two steps involved in determining the amount of the Wholesale Customers' share of Hetch Hetchy Enterprise expenses.

1. The first step is to determine the Water Enterprise's share of Hetch Hetchy Enterprise operation expenses, maintenance expenses, administrative and general expenses, and property taxes.

2. The second step is to determine the Wholesale Customers' share of expenses allocable to the Water Enterprise.

B. **Determination of the Water-Related Portion of Hetch Hetchy Enterprise Expenses**

1. Operation and Maintenance Expenses: This category consists of the cost of labor, materials and supplies, and other expenses incurred in operating and maintaining Hetch Hetchy Enterprise physical facilities.

a. Description: Expenses associated exclusively with the production and distribution of hydroelectric power (e.g., generating plants and power transmission lines and towers, transformers and associated electric equipment, purchased power, wheeling charges, rental of power lines, etc.) are categorized as Power-Only and are allocated to power. Expenses associated exclusively with the operation and maintenance of facilities that serve only the water function (e.g., water transmission pipelines and aqueducts, activities related to compliance with federal and state drinking water quality laws, etc.) are categorized as Water-Only and are allocated entirely to water. Expenses associated with the operation and maintenance of facilities that serve both the water and power functions (e.g., dams, security

programs, etc.) are categorized as Joint and are reallocated as 55 percent Power-Related and 45 percent Water-Related.

2. Administrative and General Expenses: There are three subcategories of Hetch Hetchy Enterprise Administrative and General expenses.

a. Full-Cost Countywide Cost Allocation Plan: This subcategory consists of the cost of San Francisco general government and other City central service departments which are not directly billed to operating departments but allocated through the full-cost Countywide Cost Allocation Plan described in Section 5.06.A. Costs in this subcategory are classified as Joint, and are reallocated as 55 percent Power-Related and 45 percent Water-Related.

b. SFPUC Bureau Costs: This subcategory consists of the expenses described in Section 5.06.B. One hundred percent of Customer Services expenses allocated to the Hetch Hetchy Enterprise are categorized as Power-Only. The remaining amount of Bureau expenses allocated to the Hetch Hetchy Enterprise pursuant to Section 5.06.B will be reallocated between power and water in proportion to the salaries of Hetch Hetchy Enterprise employees assigned to each function as shown on Attachment N-2, Schedule 7.1.

c. Other Administrative and General: This subcategory includes payments to the United States required by the Act, labor, supervision and engineering and other costs not readily assignable to a specific operation or maintenance function or program. Costs related to power administration (such as long range planning and policy analysis for energy development, administration of power contracts, and administration of work orders to City departments for energy services) are Power-Only costs. Costs related to water administration (such as legal and professional services for the protection of the City's water rights) are Water-Only costs and will be assigned to the Water Enterprise. Costs related to both power administration and water administration (such as general administration, office rents, office materials and supplies, and services of other City departments benefitting to both power and water are Joint administrative and general costs and are reallocated as 55 percent Power-Related and 45 percent Water-Related.

3. Property Taxes. This category consists of property taxes levied against property owned by San Francisco in Tuolumne, Stanislaus, San Joaquin, and Alameda counties and operated and managed by the Hetch Hetchy Enterprise.

Allocation: Property taxes are classified as Joint costs. They will be reallocated as 55 percent Power-Related and 45 percent Water-Related.

C. **Calculation of Wholesale Customers' Share of Hetch Hetchy Enterprise Expenses**. The Water Enterprise's share of Hetch Hetchy Enterprise expenses consist of 100 percent of Water-Only expenses and the Water-Related portion (45%) of Joint expenses.

The Wholesale Customers' share of the sum of the Water Enterprise's share of Hetch Hetchy Enterprise expenses determined under subsection B shall be calculated by multiplying that dollar amount by Adjusted Proportional Annual Use.

5.09 Hetch Hetchy Enterprise Capital Costs

A. **Introduction**. Wholesale Customers are also allocated a share of Hetch Hetchy Enterprise capital costs.

B. **Components of Capital Costs**. The components of Hetch Hetchy Enterprise capital costs are as follows:

1. Existing Assets Cost Recovery. The Wholesale Customers' repayment of their share of Hetch Hetchy Existing Assets (Water-Only and the Water-Related portion [45 percent] of Joint assets) is shown on Attachment K-4 accompanying Section 5.03.

2. Debt Service on New Assets. The Water Enterprise will be assigned 100 percent of Net Annual Debt Service attributable to acquisition and construction of New Hetch Hetchy Enterprise assets that are Water-Only and the Water-Related portion (45 percent) of Net Annual Debt Service on New Hetch Hetchy Enterprise Joint assets. The provisions of Section 5.04.A apply to debt service on New Hetch Hetchy Enterprise assets.

3. Revenue-Funded Capital Additions. The Water Enterprise will be assigned 100 percent of capital expenditures from revenues for New Hetch Hetchy Enterprise assets that are Water-Only and the Water-Related portion (45 percent) of such expenditures for new Hetch Hetchy Enterprise Joint assets. The provisions of Section 5.04.B apply to the payment of New revenue-funded Hetch Hetchy Enterprise assets.

C. **Calculation of Wholesale Customers' Share of Hetch Hetchy Enterprise Capital Costs**. The Wholesale Customers' share of the Net Annual Debt Service and revenue funded capital expenditures determined under subsections B.2 and 3 shall be calculated by multiplying that dollar amount by Adjusted Proportional Annual Use.

5.10 Additional Agreements Related to Financial Issues

A. **Wholesale Customers Not Entitled to Certain Revenues**. The Wholesale Customers have no entitlement to any of the following sources of revenue to the SFPUC.

1. Revenues from leases or sales of SFPUC real property.

2. Revenues from the other utility services such as the sale of electric power, natural gas and steam.

3. Revenues from the sale of water to customers and entities other than the Wholesale Customers.

4. Revenues earned from the investment of SFPUC funds other than funds contributed by the Wholesale Customers to the Wholesale Revenue Coverage Reserve described in Section 6.06 or the Wholesale Capital Fund described in Section 6.08. Wholesale Customers are also entitled to the benefit of earnings on proceeds of Indebtedness (through expenditure on New Regional Assets and /or application to Debt Service) and to interest on the Balancing Account as provided in Section 6.05.B.

5. Revenues not related to the sale of water.

B. **Wholesale Customers Not Charged with Certain Expenses**. The Wholesale Customers will not be charged with any of the following expenses:

1. Capital costs for assets constructed or acquired prior to July 1, 1984 other than Existing Asset costs that are repaid pursuant to Section 5.03.

2. Expenses incurred by the SFPUC for generation and distribution of electric power, including Hetch Hetchy Enterprise Power-Only expenses and the Power-Related share of Hetch Hetchy Enterprise Joint expenses. An exception to this is Regional energy costs incurred by the Water Enterprise, for which Wholesale Customers are charged on the basis of Proportional Annual Use.

3. Expenses incurred by SFPUC in providing water to Retail Customers.

4. Expenses associated with the SFPUC's accruals or allocations for uncollectible Retail Water accounts.

5. Attorneys' fees and costs incurred by the Wholesale Customers that a court of competent jurisdiction orders San Francisco to pay as part of a final, binding judgment against San Francisco as provided in Section 8.03.B.2.

6. Any expenses associated with funding any reserves (other than the required Wholesale Revenue Coverage Reserve described in Section 6.06) accrued and not anticipated to be paid within one year unless such reserve is established by mutual agreement of the SFPUC and BAWSCA.

7. Any expenses accrued in respect to pending or threatened litigation, damage or personal injury claims or other loss contingencies unless projected to be paid within one year. Otherwise, such expenses will be charged to the Wholesale Customers when actually paid.

8. Any expense associated with installing, relocating, enlarging, removing or modifying meters and service connections at the request of an individual Wholesale Customer.

9. The Retail Customers' portion of any Environmental Enhancement Surcharges imposed to enforce the Interim Supply Limitation set forth in Section 4.04.

C. **Revenues Not Credited to Payment of Wholesale Revenue Requirement**. The following payments by Wholesale Customers, individually or collectively, are not credited as Wholesale revenues for purposes of Section 6.05.B:

1. Payments by individual Wholesale Customers of the Environmental Enhancement Surcharge imposed to enforce the Interim Supply Limitation set forth in Section 4.04.

2. Payments of attorneys' fees and costs incurred by San Francisco that a court of competent jurisdiction orders the Wholesale Customers to pay as part of a final, binding judgment against the Wholesale Customers, as provided in Section 8.03.B.3.

3. Payments by individual Wholesale Customers for installation, relocation, enlargement, removal or modification of meters and service connections requested by, and charged to, a Wholesale Customer.

4. Payments applied to the amortization of the ending balance in the balancing account under the 1984 Agreement, pursuant to Section 6.05.A.

5. Payments of the Water Management Charge which are delivered to BAWSCA pursuant to Section 3.06.

6. Payments directed to the Wholesale Revenue Coverage Reserve pursuant to Section 6.06.

7. Prepayments authorized by Sections 5.03.C and 5.03.F.

D. Other

1. The Wholesale Customers will receive a proportional benefit from funds received by the SFPUC from (a) governmental grants, rebates, reimbursements or other subventions, (b) private-sector grants for Regional capital or operating purposes of the Water Enterprise and the Water-Only and Water-related portion of Joint Hetch Hetchy Water Enterprise expenses, or (c) a SFPUC use of taxable bonds.

2. The Wholesale Customers will receive a proportionate benefit from recovery of damages, including liquidated damages, by SFPUC from judgments against or settlements with contractors, suppliers, sureties, etc., related to Regional Water System projects and the Water-Only and Water-Related portion of Joint Hetch Hetchy Enterprise projects.

3. The SFPUC will continue to charge Wholesale Customers for assets acquired or constructed with proceeds of Indebtedness on which Wholesale Customers paid Debt Service during the Term of this Agreement on the "cash" basis (as opposed to the "utility" basis) after the expiration or earlier termination of this Agreement. The undertaking in this Section 5.10.D.3 will survive the expiration or earlier termination of this Agreement.

Article 6. Integration of Wholesale Revenue Requirement with SFPUC Budget Development and Rate Adjustments

6.01 General

A. The purpose of the allocation bases set forth in Article 5 is to determine the Wholesale Revenue Requirement for each fiscal year. The Wholesale Revenue Requirement can only be estimated in advance, based on projected costs and water deliveries. These projections are used to establish water rates applicable to the Wholesale Customers.

B. After the close of each fiscal year, the procedures described in Article 7 will be used to determine the actual Wholesale Revenue Requirement for that year, based on actual costs incurred, allocated according to the provisions of Article 5, and using actual water delivery data. The amount properly allocated to the Wholesale Customers shall be compared to the amount billed to the Wholesale Customers for the fiscal year, other than those identified in Section 5.10.C. The difference will be entered into a balancing account to be charged to, or credited to, the Wholesale Customers, as appropriate.

C. The balancing account shall be managed as described in Section 6.05.

6.02 Budget Development

The SFPUC General Manager will send a copy of the proposed SFPUC budget to BAWSCA at the same time as it is sent to the Commission. In addition, a copy of materials submitted to the Commission for consideration at meetings prior to the meeting at which the overall SFPUC budget is considered (including (a) operating budgets for the Water Enterprise and the Hetch Hetchy Enterprise, (b) budgets for SFPUC Bureaus, and (c) capital budgets for the Water Enterprise and the Hetch Hetchy Enterprise) will also be sent to BAWSCA concurrently with their submission to the Commission.

6.03 Rate Adjustments

A. **Budget Coordinated Rate Adjustments**. Adjustments to the rates applicable to the Wholesale Customers shall be coordinated with the budget development process described in this section except to the extent that Sections 6.03.B and 6.03.C authorize emergency rate increases and drought rate increases, respectively.

If the SFPUC intends to increase wholesale water rates during the ensuing fiscal year, it will comply with the following procedures:

1. Adjustments to the wholesale rates will be adopted by the Commission at a regularly scheduled meeting or at special meeting, properly noticed, called for the purpose of adjusting rates or for taking any other action under the jurisdiction of the Commission.

2. The SFPUC will send a written notice by mail or electronic means to each Wholesale Customer and to BAWSCA of the recommended adjustment at least thirty (30) days prior to the date of the meeting at which the Commission will consider the proposed adjustment. The notice will include the date, time and place of the Commission meeting.

3. The SFPUC shall prepare and provide to each Wholesale Customer and to BAWSCA the following materials: (a) a table illustrating how the increase or decrease in the Wholesale Revenue Requirement and wholesale rates were calculated, substantially in the form of Attachment N-1, (b) a schedule showing the projected expenses included in the Wholesale Revenue Requirement for the fiscal year for which the rates are being proposed, and supporting materials, substantially in the form of Attachment N-2, and (c) a schedule showing projected water sales, Wholesale Revenue Requirements and wholesale rates for the fiscal year for which rates are being set and the following four years, substantially in the form of Attachment N-3. These materials will be included with the notification required by Section 6.03.A.2.

4. Rate adjustments will be effective no sooner than thirty (30) days after adoption of the wholesale rate by the Commission.

5. San Francisco will use its best efforts to provide the Wholesale Customers with the information described above. San Francisco's failure to comply with the requirements set forth in this section shall not invalidate any action taken by the Commission (including, but not limited to, any rate increase or decrease adopted). In the event of such failure, the Wholesale Customers may either invoke arbitration, as set forth in Section 8.01, or seek injunctive relief, to compel San Francisco to remedy the failure as soon as is reasonably practical, and San Francisco shall be free to oppose the issuance of the requested judicial or arbitral relief on any applicable legal or equitable basis. The existence of this right to resort to arbitration shall not be deemed to preclude the right to seek injunctive relief.

6. Because delays in the budget process or other events may cause San Francisco to defer the effective date of Wholesale Customer rate adjustments until after the beginning of San Francisco's fiscal year, nothing contained in this Agreement shall require San Francisco to make any changes in the water rates charged to Wholesale Customers effective at

the start of San Francisco's fiscal year or at any other specific date. Nothing in the preceding sentence shall excuse non-compliance with the provisions of Section 6.02 and this section.

B. **Emergency Rate Increases**. The Commission may adjust the Wholesale Customers' rates without complying with the requirements of Section 6.03.A in response to an Emergency that damages the Regional Water System and disrupts San Francisco's ability to maintain normal deliveries of water to Retail and Wholesale Customers. In such an Emergency, the Commission may adopt an emergency rate surcharge applicable to Wholesale Customers without following the procedures set forth in this section, provided that any such rate surcharge imposed by the Commission shall be applicable to both Retail and Wholesale Customers and incorporate the same percentage increase for all customers. Any emergency rate surcharge adopted by the Commission shall remain in effect only until the next-budget coordinated rate-setting cycle.

C. **Drought Rates**. If the Commission declares a water shortage emergency under Water Code Section 350, implements the Tier 1 Shortage Plan (Attachment H) described in Section 3.11.C, and imposes drought rates on Retail Customers, it may concurrently adjust wholesale rates independently of coordination with the annual budget process. Those adjustments may be designed to encourage water conservation and may constitute changes to the structure of the rates within the meaning of Section 6.04. The parties agree, however, that, in adopting changes in rates in response to a declaration of water shortage emergency; the Commission shall comply with Section 6.03.A.1 and 2 but need not comply with Section 6.04.B. Drought Rate payments and payments of excess use charges levied in accordance with the Tier 1 Shortage Plan described in Section 3.11.C constitute Wholesale Customer Revenue and count towards the Wholesale Revenue Requirement. The SFPUC may use these revenues to purchase additional water for the Wholesale Customers from the State Drought Water Bank or other willing seller.

6.04 Rate Structure

A. This Agreement is not intended and shall not be construed to limit the Commission's right (a) to adjust the structure of the rate schedule applicable to the Wholesale Customers (i.e., the relationship among the several charges set out therein) or (b) to add, delete, or change the various charges which make up the rate schedule, provided that neither such charges nor the structure of the rate schedule(s) applicable to the Wholesale Customers shall be arbitrary, unreasonable, or unjustly discriminatory as among said customers. The

SFPUC will give careful consideration to proposals for changes in the rate schedule made jointly by the Wholesale Customers but, subject to the limitations set out above, shall retain the sole and exclusive right to determine the structure of the rate schedule.

B. If the SFPUC intends to recommend that the Commission adopt one or more changes to the structure of wholesale rates (currently set forth in SFPUC Rate Schedule W-25), it shall prepare and distribute to the Wholesale Customers and BAWSCA a report describing the proposed change(s), the purpose(s) for which it/they are being considered, and the estimated financial effect on individual Wholesale Customers or classes of customers. Wholesale Customers may submit comments on the report to the SFPUC for sixty (60) days after receiving the report. The SFPUC will consider these comments and, if it determines to recommend that the Commission adopt the change(s), as described in the report or as modified in response to comments, the SFPUC General Manager shall submit a report to the Commission recommending specific change(s) in the rate structure. Copies of the General Manager's report shall be sent to all Wholesale Customers and BAWSCA at least thirty (30) days prior to the Commission meeting at which the changes will be considered.

C. The SFPUC may recommend, and the Commission may adopt, changes in the structure of wholesale rates at any time. However, the new rate schedule implementing these changes will become effective at the beginning of the following fiscal year.

6.05 Balancing Account

A. **Balancing Account Established Under 1984 Agreement**. The amount of credit in favor of San Francisco as of the expiration of the term of 1984 Agreement (June 30, 2009) is not known with certainty as of preparation and execution of this Agreement. It will not be known with certainty until the Compliance Audit for FY 2008-09 is completed and disputes, if any, that the Wholesale Customers or the SFPUC may have with the calculation of the Suburban Revenue Requirement for that fiscal year and for previous fiscal years have been settled or decided by arbitration.

The parties anticipate that the amount of the credit in favor of San Francisco as of June 30, 2009 may be within the range of $15 million to $20 million.

In order to reduce the credit balance due San Francisco under the 1984 Agreement in an orderly manner, while avoiding unnecessary fluctuations in wholesale rates, the parties agree to implement the following procedure.

1. In setting wholesale rates for FY 2009-10, SFPUC will include a balancing account repayment of approximately $2 million.

2. In setting wholesale rates for FY 2010-11 and following years, SFPUC will include a balancing account repayment of not less than $2 million and not more than $5 million annually until the full amount of the balance due, plus interest at the rate specified in Section 6.05.B, is repaid.

3. The actual ending balance as of June 30, 2009 will be determined, by the parties' agreement or arbitral ruling, after the Compliance Audit report for FY 2008-09 is delivered to BAWSCA. That amount, once determined, will establish the principal to be amortized through subsequent years' repayments pursuant to this Section 6.05.A.

B. **Balancing Account Under This Agreement**

1. Operation. After the close of each fiscal year, the SFPUC will compute the costs allocable to the Wholesale Customers for that fiscal year pursuant to Article 5, based on actual costs incurred by the SFPUC and actual amounts of water used by the Wholesale Customers and the Retail Customers. That amount will be compared to the amounts billed to the Wholesale Customers for that fiscal year (including any Excess Use Charges, but excluding revenues described in Section 5.10.C). The difference will be posted to a "balancing account" as a credit to, or charge against, the Wholesale Customers. Interest shall also be posted to the balancing account calculated by multiplying the amount of the opening balance by the average net interest rate, certified by the Controller as earned in the San Francisco Treasury for the previous fiscal year on the San Francisco County Pooled Investment Account. Interest, when posted, will carry the same mathematical sign (whether positive or negative) as carried by the opening balance. The amount posted to the balancing account in each year shall be added to, or subtracted from, the balance in the account from previous years. The calculation of the amount to be posted to the balancing account shall be included in the report prepared by the SFPUC pursuant to Section 7.02.

The opening balance for fiscal year 2009-10 shall be zero.

2. Integration of Balancing Account with Wholesale Rate Setting Process. If the amount in the balancing account is owed to the Wholesale Customers (a positive balance), the SFPUC shall take it into consideration in establishing wholesale rates. However, the SFPUC need not apply the entire amount to reduce wholesale rates for the immediately ensuing

year. Instead, the SFPUC may prorate a positive ending balance over a period of up to three successive years in order to avoid fluctuating decreases and increases in wholesale rates.

a. If a positive balance is maintained for three successive years and represents 10 percent or more of the Wholesale Revenue Requirement for the most recent fiscal year, the SFPUC shall consult with BAWSCA as to the Wholesale Customers' preferred application of the balance. The Wholesale Customers shall, through BAWSCA, direct that the positive balance be applied to one or more of the following purposes: (a) transfer to the Wholesale Revenue Coverage Reserve, (b) amortization of any remaining negative balance from the ending balancing account under the 1984 Agreement, (c) prepayment of the existing asset balance under Section 5.03, (d) water conservation or water supply projects administered by or through BAWSCA, (e) immediate reduction of wholesale rates, or (f) continued retention for future rate stabilization purposes. In the absence of a direction from BAWSCA, the SFPUC shall continue to retain the balance for rate stabilization in subsequent years.

b. If the amount in the balancing account is owed to the SFPUC (a negative balance), the SFPUC shall not be obligated to apply all or any part of the negative balance in establishing wholesale rates for the immediately ensuring year. Instead, the SFPUC may prorate the negative balance in whole or in part over multiple years in order to avoid fluctuating increases and decreases in wholesale rates.

6.06 <u>Wholesale Revenue Coverage Reserve</u>

A. The SFPUC may include in wholesale rates for any fiscal year an additional dollar amount ("Wholesale Revenue Coverage"), which for any fiscal year shall equal the following:

1. The lesser of (i) 25% of the Wholesale Customers' share of Net Annual Debt Service for that fiscal year determined as described in Section 5.04.A, or (ii) the amount necessary to meet the Wholesale Customers' proportionate share of Debt Service coverage required by then-current Indebtedness for that fiscal year, minus

2. A credit for (i) the actual amounts previously deposited in the "Wholesale Revenue Coverage Reserve" (as defined in subsection B below), (ii) accrued interest on the amounts on deposit in the Wholesale Revenue Coverage Reserve, and (iii) an amount equal to any additional interest that would have accrued on the actual amounts previously deposited in

the Wholesale Revenue Coverage Reserve assuming no withdrawals had been made therefrom.

B. During each fiscal year, the SFPUC will set aside and deposit that portion of revenue equal to Wholesale Revenue Coverage into a separate account that the SFPUC will establish and maintain, to be known as the "Wholesale Revenue Coverage Reserve." Deposits into the Wholesale Revenue Coverage Reserve shall be made no less frequently than monthly. The Wholesale Revenue Coverage Reserve shall be credited with interest at the rate specified in Section 6.05.B. The SFPUC may use amounts in the Wholesale Revenue Coverage Reserve for any lawful purpose. Any balance in the Wholesale Revenue Coverage Reserve in excess of the Wholesale Revenue Coverage amount as of the end of any fiscal year (as calculated in subsection 6.06(A) above) shall be applied as a credit against wholesale rates in the immediately following fiscal year unless otherwise directed by BAWSCA.

C. Within 180 days following the later of expiration of the Term or final payment of Debt Service due on Indebtedness issued during the Term to which Wholesale Customers were contributing, SFPUC shall rebate to the Wholesale Customers an amount equal to the Wholesale Revenue Coverage amount in effect for the fiscal year during which the Term expires or the final payment of Debt Service on Indebtedness is made based on each Wholesale Customer's Proportional Annual Use in the fiscal year during which the Term expires or the final payment of debt service on Indebtedness is made.

D. SFPUC shall provide a schedule of debt issuance (with assumptions), and the Wholesale Customers' share of Net Annual Debt Service (actual and projected) expected to be included in wholesale rates starting in 2009-10 through the expected completion of the WSIP. The schedule is to be updated annually prior to rate setting. If estimated Debt Service is used in rate setting, the SFPUC must be able to demonstrate that the Water Enterprise revenues will be sufficient to meet the additional bonds test for the proposed bonds and rate covenants for the upcoming year.

E. Conditions in the municipal bond market may change from those prevailing in 2009. If, prior to expiration of the Term, the SFPUC determines that it would be in the best financial interest of both Retail Customers and Wholesale Customers of the Regional Water System for the Debt Service coverage requirement to be increased in one or more series of proposed new Indebtedness above 1.25%, or for the coverage covenant to be strengthened in

other ways, it will provide a written report to BAWSCA. The report will contain (1) a description of proposed covenant(s) in the bond indenture; (2) an explanation of how savings are expected to be achieved (e.g., increase in the SFPUC's credit rating over the then-current level; ability to obtain credit enhancement, etc.); (3) the estimated all-in true interest cost savings; (4) a comparison of the Wholesale Revenue Requirements using the Debt Service coverage limitation in subsection A and under the proposed methodology; and (5) a comparison of the respective monetary benefits expected to be received by both Retail and Wholesale Customers. The SFPUC and BAWSCA agree to meet and confer in good faith about the proposed changes.

F. Any increase in Debt Service coverage proposed by the SFPUC shall be commensurate with Proportional Water Use by Retail and Wholesale Customers. If the SFPUC demonstrates that an increase in Debt Service coverage will result in equivalent percentage reductions in total Wholesale and Retail Debt Service payments over the life of the proposed new Indebtedness, based on Proportional Water Use, BAWSCA may agree to a modification of the Wholesale Revenue Coverage requirement in subsection A. If BAWSCA does not agree to a proposed modification in coverage requirements in the covenants for new Indebtedness, SFPUC may nevertheless proceed with the modification and the issuance of new Indebtedness. Any Wholesale Customer, or BAWSCA, may challenge an increase in the Wholesale Revenue Requirement resulting from the modification in Debt Service coverage through arbitration as provided in Section 8.01.A. If the arbitrator finds that the increase in Debt Service coverage (1) did not and will not result in equivalent percentage reductions in total Wholesale and Retail Debt Service payments over the life of the proposed new Indebtedness, based on Proportional Water Use, or (2) was not commensurate with Proportional Water Use, the arbitrator may order the Wholesale Revenue Requirement to be recalculated both retrospectively and prospectively to eliminate the differential impact to Wholesale or Retail Customers, subject to the limitation in Section 8.01.C.

6.07 <u>Working Capital Requirement</u>

A. The SFPUC maintains working capital in the form of unappropriated reserves for the purpose of bridging the gap between when the SFPUC incurs operating expenses required to provide service and when it receives revenues from its Retail and Wholesale Customers. The Wholesale Customers shall fund their share of working capital as part of the annual Wholesale Revenue Requirement calculation. The amount of wholesale working capital for which the Wholesale Customers will be responsible will be determined using the 60-day standard formula approach.

B. Applying this approach, annual wholesale working capital equals one-sixth of the wholesale allocation of operation and maintenance, administrative and general, and property tax expenses for the Water and Hetch Hetchy Enterprises. Wholesale working capital shall be calculated separately for the Water and Hetch Hetchy Enterprises.

C. Each month, the sum of the Water Enterprise and Hetch Hetchy Enterprise working capital components will be compared with the ending balance in the Wholesale Revenue Coverage Reserve to determine if the Wholesale Customers provided the minimum required working capital. If the Wholesale Revenue Coverage Reserve is greater than the total Water Enterprise and Hetch Hetchy Enterprise working capital requirement, the Wholesale Customers will have provided their share of working capital. If the Wholesale Revenue Coverage Reserve is less than the total Water Enterprise and Hetch Hetchy Enterprise working capital requirement, the Wholesale Customers will be charged interest on the difference, which will be included in the adjustment to the Balancing Account under Section 6.05.B for the subsequent fiscal year.

6.08 <u>Wholesale Capital Fund</u>

A. The SFPUC currently funds revenue-funded capital projects through annual budget appropriations that are included in rates established for that fiscal year and transferred to a capital project fund from which expenditures are made. Consistent with the San Francisco Charter and Administrative Code, the SFPUC appropriates funds in advance of construction in order to maintain a positive balance in the capital project fund. The capital project fund also accrues interest and any unspent appropriations in excess of total project costs. It is the SFPUC's practice to regularly monitor the capital project fund balance to determine whether a surplus has accumulated, which can be credited against the next fiscal year's capital project appropriation.

B. The SFPUC shall establish a comparable Wholesale Revenue-Funded Capital Fund (Wholesale Capital Fund) to enable the Wholesale Customers to fund the wholesale share of revenue-funded New Regional Assets. The Wholesale Capital Fund balance is zero as of July 1, 2009. The SFPUC may include in wholesale rates for any fiscal year an amount equal to the wholesale share of the SFPUC's appropriation for revenue funded New Regional Assets for that year, which sum will be credited to the Wholesale Capital Fund. The wholesale share of other sources of funding, where legally permitted and appropriately accounted for under GAAP,

will also be credited to the Wholesale Capital Fund, together with interest earnings on the Wholesale Capital Fund balance.

C. The SFPUC will expend revenues appropriated and transferred to the Wholesale Capital Fund only on New Regional Assets. The annual capital appropriation included in each fiscal year's budget will be provided to BAWSCA in accordance with Section 6.02 and will take into account the current and projected balance in the Wholesale Capital Fund, as well as current and projected unexpended and unencumbered surplus, as shown on attachment M-1, which will be prepared by the SFPUC each year.

D. Commencing on November 30, 2010 and thereafter in each fiscal year during the Term, the SFPUC will also provide an annual report to BAWSCA on the status of individual revenue-funded New Regional Assets, substantially in the form of Attachment M-2.

E. In order to prevent the accumulation of an excessive unexpended and unencumbered surplus in the Wholesale Capital Fund, the status of the fund balance will be reviewed through the Compliance Audit at five-year intervals, commencing in FY 2014-15. Any excess fund balance (i.e., an accumulated unexpended, unencumbered amount in excess of ten percent (10%) of the wholesale share of total capital appropriations for New Regional Assets during the five preceding years) will be transferred to the credit of the Wholesale Customers to the Balancing Account described in Section 6.05. Attachment M-3 illustrates the operation of this review process, covering FY 2009-10 through FY 2013-14 and FY 2014-15 through 2018-19.

F. Three years prior to the end of the Term, the SFPUC and BAWSCA will discuss the disposition of the Wholesale Capital Fund balance at the end of the Term. Absent agreement, any balance remaining in the Wholesale Capital Fund at the end of the Term shall be transferred to the Balancing Account, to the credit of the Wholesale Customers.

Article 7. Accounting Procedures; Compliance Audit

7.01 SFPUC Accounting Principles, Practices

A. **Accounting Principles.** San Francisco will maintain the accounts of the SFPUC and the Water and Hetch Hetchy Enterprises in conformity with Generally Accepted Accounting Principles. San Francisco will apply all applicable pronouncements of the Governmental Accounting Standards Board (GASB) as well as statements and interpretations of the Financial Accounting Standards Board and Accounting Principles Board opinions issued on or before March 30, 1989, unless those pronouncements or opinions conflict with GASB pronouncements.

B. **General Rule.** San Francisco will maintain the accounting records of the SFPUC and the Water and Hetch Hetchy Enterprises in a format and level of detail sufficient to allow it to determine the annual Wholesale Revenue Requirement in compliance with this Agreement and to allow its determination of the Wholesale Revenue Requirement to be audited as provided in Section 7.04.

C. **Water Enterprise.** San Francisco will maintain an account structure which allows utility plant and operating and maintenance expenses to be segregated by location (inside San Francisco and outside San Francisco) and by function (Direct Retail, Regional and Direct Wholesale).

D. **Hetch Hetchy Enterprise.** San Francisco will maintain an account structure which allows utility plant and operating and maintenance expenses to be segregated into Water Only, Power Only and Joint categories.

E. **SFPUC.** San Francisco will maintain an account structure which allows any expenses of SFPUC bureaus that benefit only the Wastewater Enterprise, the Power-Only operations of the Hetch Hetchy Enterprise or Retail Customers to be excluded from the Wholesale Revenue Requirement.

F. **Utility Plant Ledgers.** San Francisco will maintain subsidiary plant ledgers for the Water and Hetch Hetchy Enterprises that contain unique identifying numbers for all assets included in the rate base and identify the original cost, annual depreciation, accumulated depreciation, date placed in service, useful life, salvage value if any, source of funding (e.g., bond series, revenues, grants), and classification for purposes of this Agreement.

G. **Debt**. San Francisco will maintain documentation identifying:

1. The portion of total bonded debt outstanding related to each series of each bond issue.

2. The portion of total interest expense related to each series of each bond issue.

3. The use of proceeds of each bond issue (including proceeds of commercial paper and/or other interim financial instruments redeemed or expected to be redeemed from bonds and earnings on the proceeds of financings) in sufficient detail to determine, for each bond issue, the proceeds and earnings of each (including proceeds and earnings of interim financing vehicles redeemed by a bond issue) and the total amounts expended on Direct Retail improvements and the total amounts expended on Regional improvements.

H. **Changes in Accounting**. Subject to subsections A thru G, San Francisco may change the chart of accounts and accounting practices of the SFPUC and the Water and Hetch Hetchy Enterprises. However, the allocation of any expense to the Wholesale Customers that is specified in the Agreement may not be changed merely because of a change in (1) the accounting system or chart of accounts used by SFPUC, (2) the account to which an expense is posted or (3) a change in the organizational structure of the SFPUC or the Water or Hetch Hetchy Enterprises.

I. **Audit**. San Francisco will arrange for an audit of the financial statements of Water and Hetch Hetchy Enterprises to be conducted each year by an independent certified public accountant, appointed by the Controller, in accordance with Generally Accepted Auditing Standards.

7.02 Calculation of and Report on Wholesale Revenue Requirement

A. Within five months after the close of each fiscal year, San Francisco will prepare a report showing its calculation of the Wholesale Revenue Requirement for the preceding fiscal year and the change in the balancing account as of the end of that fiscal year. The first such report will be prepared by November 30, 2010 and will cover fiscal year 2009-10 and the balancing account as of June 30, 2010.

B. The report will consist of the following items:

1. Statement of changes in the balancing account for the fiscal year being reported on, and for the immediately preceding fiscal year, substantially in the form of Attachment O.

2. Detailed supporting schedules 8.1 through 8.2 substantially in the form of Attachment N-2.

3. Description and explanation of any changes in San Francisco's accounting practices from those previously in effect.

4. Explanation of any line item of expense (shown on Attachment N-2, schedules 1 and 4) for which the amount allocated to the Wholesale Customers increased by (a) ten percent or more from the preceding fiscal year, or (b) more than $1,000,000.

5. Representation letter signed by the SFPUC General Manager and by other SFPUC financial staff shown on Attachment P, as the General Manager may direct, subject to change in position titles at the discretion of the SFPUC.

C. The report will be delivered to the BAWSCA General Manager by the date identified in Subsection A.

Once the report has been delivered to BAWSCA, San Francisco will, upon request:

1. Provide BAWSCA with access to, and copies of, all worksheets and supporting documents used or prepared by San Francisco during its calculation of the Wholesale Revenue Requirement;

2. Make available to BAWSCA all supporting documentation and calculations used by San Francisco in preparing the report; and

3. Promptly provide answers to questions from BAWSCA staff about the report.

7.03 Appointment of Compliance Auditor

A. **Purpose.** The purpose of this section is to provide for an annual Compliance Audit by an independent certified public accountant of the procedures followed and the underlying data used by San Francisco in calculating the Wholesale Revenue Requirement for the preceding fiscal year. The annual Compliance Audit shall also determine whether the Wholesale Revenue Requirement has been calculated in accordance with the terms of the Agreement and whether amounts paid by the Wholesale Customers in excess of or less than the Wholesale Revenue Requirement have been posted to the balancing account, together with interest as provided in Section 6.05.

B. **Method of Appointment.** The Controller shall select an independent certified public accountant ("Compliance Auditor") to conduct the Compliance Audit described below. The Compliance Auditor may be the same certified public accountant engaged by the Controller to audit the financial statements of the Water and Hetch Hetchy Enterprises. Subject to approval by the Controller and the General Manager of the SFPUC, the Compliance Auditor shall have the authority to engage such consultants as it deems necessary or appropriate to assist in the audit. The terms of this Article shall be incorporated into the contract between San Francisco and the Compliance Auditor, and the Wholesale Customers shall be deemed to be third-party beneficiaries of said contract.

7.04 Conduct of Compliance Audit

A. **Standards.** The Compliance Auditor shall perform the Compliance Audit in accordance with Generally Accepted Auditing Standards. In particular, its review shall be governed by the standards contained in Section AU 623 (Reports on Specified Elements, Accounts or Items of a Financial Statement) of the AICPA, *Professional Standards*, as amended from time to time.

B. **Preliminary Meeting; Periodic Status Reports; Access to Data.** Prior to commencing the audit, the Compliance Auditor shall meet with San Francisco and BAWSCA to discuss the audit plan, the procedures to be employed and the schedule to be followed. During the course of the audit, the Compliance Auditor shall keep San Francisco and BAWSCA informed of any unforeseen problems or circumstances which could cause a delay in the audit or any material expansion of the audit's scope. The Compliance Auditor shall be given full

access to all records of the SFPUC and the Water and Hetch Hetchy Enterprises that the Auditor deems necessary for the audit.

C. **Audit Procedures**. The Compliance Auditor shall review San Francisco's calculation of the Wholesale Revenue Requirement and the underlying data in order to carry out the purpose of the audit described in Section 7.03.A and to issue the report described in Section 7.05. At a minimum, the Compliance Auditor shall address the following:

1. Water Enterprise Operating and Maintenance Expenses. The Compliance Auditor shall review Water Enterprise cost ledgers to determine whether the recorded operating and maintenance expenses fairly reflect the costs incurred, were recorded on a basis consistent with applicable Generally Accepted Accounting Principles, and were allocated to the Wholesale Customers as provided in this Agreement.

2. Water Enterprise Administrative and General Expenses. The Compliance Auditor shall review Water Enterprise cost ledgers and other appropriate financial records, including those of the SFPUC, to determine whether the recorded administrative and general expenses fairly reflect the costs incurred by or allocated to the Water Enterprise, whether they were recorded on a basis consistent with applicable Generally Accepted Accounting Principles, whether SFPUC charges were allocated to the Water Enterprise in accordance with this Agreement, and whether the amount of administrative and general expenses allocated to the Wholesale Customers was determined as provided by this Agreement.

3. Property Taxes. The Compliance Auditor shall review Water Enterprise cost ledgers to determine whether the amount of property taxes shown on the report fairly reflects the property tax expense incurred by San Francisco for Water Enterprise property outside of San Francisco and whether there has been deducted from the amount to be allocated (1) all taxes actually reimbursed to San Francisco by tenants of Water Enterprise property under leases that require such reimbursement and (2) any refunds received from the taxing authority. The Compliance Auditor also shall determine whether the amount of property taxes allocated to the Wholesale Customers was determined as provided in this Agreement.

4. Debt Service. The Compliance Auditor shall review SFPUC records to determine whether debt service, and associated coverage requirements, were allocated to the Wholesale Customers as provided in this Agreement.

5. Amortization of Existing Assets in Service as of June 30, 2009. The Compliance Auditor shall review both Water and Hetch Hetchy Enterprise records to determine whether the payoff amount for Existing Assets allocated to the Wholesale Customers as shown on Attachment K-1 through K-4 was calculated as provided in Section 5.03 of this Agreement.

6. Revenue-Funded Capital Appropriations/Expenditures. The Compliance Auditor shall review San Francisco's calculation of actual expenditures on the wholesale share of revenue-funded New Regional Assets and remaining unexpended and unencumbered project balances in the "Wholesale Capital Fund" described in Section 6.08, to determine whether the procedures contained in that section were followed.

7. Hetch Hetchy Expenses. The Compliance Auditor shall determine whether Hetch Hetchy Enterprise expenses were allocated to the Wholesale Customers as provided in this Agreement.

D. **Use of and Reliance on Audited Financial Statements and Water Use Data**

1. In performing the audit, the Compliance Auditor shall incorporate any adjustments to the cost ledgers recommended by the independent certified public accountant, referred to in Section 7.01.I, which audited the financial statements of the Water and Hetch Hetchy Enterprises. The Compliance Auditor may rely upon the work performed by that independent certified public accountant if the Compliance Auditor reviews the work and is willing to take responsibility for it as part of the compliance audit.

2. In performing the Compliance Audit and issuing its report, the Compliance Auditor may rely on water use data furnished by the Water Enterprise, regardless of whether the Wholesale Customers contest the accuracy of such data. The Compliance Auditor shall have no obligation to independently verify the accuracy of the water use data provided by San Francisco; however, the Compliance Auditor shall disclose in its report any information which came to its attention suggesting that the water use data provided by San Francisco are inaccurate in any significant respect.

E. **Exit Conference**. Upon completion of the audit, the Compliance Auditor shall meet with San Francisco and BAWSCA to discuss audit findings, including (1) any material weakness in internal controls and (2) adjustments proposed by the Compliance Auditor and San Francisco's response (i.e., booked or waived).

7.05 Issuance of Compliance Auditor's Report

A. San Francisco will require the Compliance Auditor to issue its report no later than nine months after the fiscal year under audit (i.e., March 31 of the following calendar year). The Compliance Auditor's report shall be addressed and delivered to San Francisco and BAWSCA. The report shall contain:

1. A statement that the Auditor has audited the report on the calculation of the Wholesale Revenue Requirement and changes in the balancing account, and supporting documents, prepared by San Francisco as required by Section 7.02.

2. A statement that the audit was conducted in accordance with auditing standards generally accepted in the United States of America, and that the audit provides a reasonable basis for its opinion.

3. A statement that in the Compliance Auditor's opinion the Wholesale Revenue Requirement was calculated by San Francisco in accordance with this Agreement and that the change in the balancing account shown in San Francisco's report was calculated as required by this Agreement and presents fairly, in all material respects, changes in and the balance due to (or from) the Wholesale Customers as of the end of the fiscal year under audit.

7.06 Wholesale Customer Review

A. One or more Wholesale Customers, or BAWSCA, may engage an independent certified public accountant (CPA) to conduct a review (at its or their expense) of San Francisco's calculation of the annual Wholesale Revenue Requirement and a review of changes in the balancing account.

B. If a Wholesale Customer or BAWSCA wishes such a review to be conducted it will provide written notice to SFPUC within 30 days of the date the Compliance Auditor's report is issued. The notice will identify the CPA or accounting/auditing firm that will conduct the review and the specific aspects of the Compliance Auditor's report that are the subject of the review. If more than one notice of review is received by the SFPUC, the requesting Wholesale Customers shall combine and coordinate their reviews and select a lead auditor to act on their behalf for the purposes of requesting documents and conducting on-site investigations.

C. San Francisco will cooperate with the CPA appointed by a Wholesale Customer or BAWSCA. This cooperation includes making requested records promptly available, making

knowledgeable SFPUC personnel available to timely and truthfully answer the CPA's questions and directing the Compliance Auditor to cooperate with the CPA.

D. The Wholesale Customer's review shall be completed within 60 days after the date the Compliance Auditor's report is issued. At the conclusion of the review, representatives of San Francisco and BAWSCA shall meet to discuss any differences between them concerning San Francisco's compliance with Articles 5 or 6 of this Agreement during the preceding fiscal year or San Francisco's calculation of the Wholesale Revenue Requirement for the preceding fiscal year. If such differences cannot be resolved, the dispute shall be submitted to arbitration in accordance with Section 8.01.

Article 8. Other Agreements of the Parties

8.01 Arbitration and Judicial Review

A. **General Principles re Scope of Arbitration.** All questions or disputes arising under the following subject areas shall be subject to mandatory, binding arbitration and shall not be subject to judicial determination:

1. the determination of the Wholesale Revenue Requirement, which shall include both the calculations used in the determination and the variables used in those calculations;

2. the SFPUC's adherence to accounting practices and conduct of the Compliance Audit; and

3. the SFPUC's classification of new assets for purposes of determining the Wholesale Revenue Requirement.

All other questions or disputes arising under this Agreement shall be subject to judicial determination. Disputes about the scope of arbitrability shall be resolved by the courts.

B. **Demand for Arbitration.** If any arbitrable question or dispute should arise, any Wholesale Customer or the SFPUC may commence arbitration proceedings hereunder by service of a written Demand for Arbitration. Demands for arbitration shall set forth all of the issues to be arbitrated, the general contentions relating to those issues, and the relief sought by the party serving the Demand. Within 45 days after service of a Demand upon it, any Wholesale Customer or the SFPUC may serve a Notice of Election to become a party to the arbitration and a Response to the issues set forth in the Demand. The Response shall include the party's general contentions and defenses with respect to the claims made in the Demand, and may include any otherwise arbitrable claims, contentions and demands that concern the fiscal year covered by the Demand. If a timely Notice of Election and Response is not filed by any such entity, it shall not be a party to the arbitration but shall nonetheless be bound by the award of the arbitrator. If no party to this Agreement serves a timely Notice of Election and Response, the party seeking arbitration shall be entitled to the relief sought in its Demand for Arbitration without the necessity of further proceedings. Any claims not made in a Demand or Response shall be deemed waived.

If a Demand or Notice of Election is made by the SFPUC, it shall be served by personal delivery or certified mail to each Wholesale Customer at the address of such customer as set forth in the billing records of the SFPUC. If a Demand or Notice of Election is made by a Wholesale Customer, service shall be by certified mail or personal delivery to the General Manager, SFPUC, 1155 Market Street, 11th Floor, San Francisco, California 94103, and to each of the other Wholesale Customers. If arbitration is commenced, the Wholesale Customers shall use their best efforts to formulate a single, joint position with respect thereto. In any event, with respect to the appointment of arbitrators, as hereinafter provided, all Wholesale Customers that take the same position as to the issues to be arbitrated shall jointly and collectively be deemed to be a single party.

C. **Limitations Period.** All Demands For Arbitration shall be served within twelve months of receipt by BAWSCA of the Wholesale Revenue Requirement Compliance Auditor's Report for that year. If a party fails to file a Demand within the time period specified in this subsection, that party waives all present and future claims with respect to the fiscal year in question. If no such Demand is served within the twelve month period specified above, the SFPUC's determination of the Wholesale Revenue Requirement for that year shall be final and conclusive. Whether any particular claim is barred by the twelve month limitations period provided for herein shall be for the arbitrator to determine. Prior to the expiration of the twelve month limitations period, the parties to the dispute may agree by written stipulation to extend the period by up to six additional months.

The Arbitrator may order the alteration or recalculation of underlying Water Enterprise and/or Hetch Hetchy Enterprise accounts or asset classifications. Such changes shall be used to calculate the Wholesale Revenue Requirement for the fiscal year in dispute and shall also be used to determine future Wholesale Revenue Requirements, if otherwise applicable, even though the existing entries in such accounts or the asset classifications, in whole or in part, predate the twelve month period described above, so long as a timely arbitration Demand has been filed in accordance with this subsection.

D. **Number and Appointment of Arbitrators.** All arbitration proceedings under this section shall be conducted by a single arbitrator, selected by the SFPUC and a designated representative of the Wholesale Customers or each group of Wholesale Customers that take the same position with respect to the arbitration, within 75 days after service of the Demand. If the parties to the arbitration cannot agree on an arbitrator within 75 days, any party may petition

the Marin County Superior Court for the appointment of an arbitrator pursuant to Code of Civil Procedure Section 1281.6 (or any successor provision).

E. **Guidelines for Qualifications of Arbitrators**. The Wholesale Customers and the SFPUC acknowledge that the qualifications of the arbitrator will vary with the nature of the matter arbitrated, but, in general, agree that such qualifications may include service as a judge or expertise in one or more of the following fields: public utility law, water utility rate setting, water system and hydraulic engineering, utility accounting methods and practices, and water system operation and management. The parties to the arbitration shall use their best efforts to agree in advance upon the qualifications of any arbitrator to be appointed by the Superior Court.

F. **Powers of Arbitrator; Conduct of Proceedings**

1. Except as provided in this section, arbitrations under this section shall be conducted under and be governed by the provisions of California Code of Civil Procedure Sections 1282.2 through 1284.2 (hereinafter, collectively, "Code sections"), and arbitrators appointed hereunder shall have the powers and duties specified by the Code sections.

2. Within the meaning of the Code sections, the term "neutral arbitrator" shall mean the single arbitrator selected by the parties to the arbitration.

3. Unless waived in writing by the parties to the arbitration, the notice of hearing served by the arbitrator shall not be less than 90 days.

4. The lists of witnesses (including expert witnesses), and the lists of documents (including the reports of expert witnesses) referred to in Code of Civil Procedure Section 1282.2 shall be mutually exchanged, without necessity of demand therefore, no later than 60 days prior to the date of the hearing, unless otherwise agreed in writing by the parties to the arbitration. Upon application of any party, or on his or her own motion, the arbitrator may schedule one or more prehearing conferences for the purposes of narrowing and/or expediting resolution of the issues in dispute. Strict conformity to the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privileges and work product. The arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all parties are afforded the opportunity to present material and relevant evidence.

5. Within thirty days after the close of the arbitration hearing, or such other time as the arbitrator shall determine, the parties will submit proposed findings and a proposed remedy to the arbitrator. The parties may file objections to their adversary's proposed findings and remedy within a time limit to be specified by the arbitrator. The arbitrator shall not base his or her award on information not obtained at the hearing.

6. The arbitrator shall render a written award no later than twelve months after the arbitrator is appointed, either by the parties or by the court, provided that such time may be waived or extended as provided in Code of Civil Procedure Section 1283.8.

7. The provisions for discovery set forth in Code of Civil Procedure Section 1283.05 are incorporated into and made part of this Agreement, except that: (a) leave of the arbitrator need not be obtained for the taking of depositions, including the depositions of expert witnesses; (b) the provisions of Code of Civil Procedure Section 2034.010 et seq., relating to discovery of expert witnesses, shall automatically be applicable to arbitration proceedings arising under this Agreement without the necessity for a formal demand pursuant to Section 2034.210 and the date for the exchange of expert discovery provided by Sections 2034.260 and 2034.270 shall be not later than 60 days prior to the date for the hearing; and (c) all reports, documents, and other materials prepared or reviewed by any expert designated to testify at the arbitration shall be discoverable. In appropriate circumstances, the arbitrator may order any party to this Agreement that is not a party to the arbitration to comply with any discovery request.

8. For the purposes of allocation of expenses and fees, as provided in Code of Civil Procedure Section 1284.2, if any two or more Wholesale Customers join together in a single, joint position in the arbitration, those Wholesale Customers shall be deemed to be a single party. If any Wholesale Customer or customers join together with the SFPUC in a single joint position in the arbitration, those Wholesale Customers and the SFPUC together shall be deemed to be a single party.

9. Subject to any other limitations imposed by the Agreement, the arbitrator shall have power to issue orders mandating compliance with the terms of the Agreement or enjoining violations of the Agreement. With respect to any arbitration brought to redress a claimed wholesale overpayment to the SFPUC, the arbitrator's power to award monetary relief

shall be limited to entering an order requiring that an adjustment be made in the amount posted to the balancing account for the fiscal year covered by the Demand.

10. All awards of the arbitrator shall be binding on the SFPUC and the Wholesale Customers regardless of the participation or lack thereof by any Wholesale Customer or the SFPUC as a party to the arbitration proceeding. The parties to an arbitration shall have the power to modify or amend any arbitration award by mutual consent. The arbitrator shall apply California law.

8.02 Attorneys' Fees

A. Arbitration or Litigation Between San Francisco and Wholesale Customers Arising under the Agreement or Individual Water Sales Contracts. Each party will bear its own costs, including attorneys' fees, incurred in any arbitration or litigation arising under this Agreement or the Individual Water Sales Contracts between San Francisco and the Wholesale Customers. Notwithstanding the foregoing, and subject to the limitations contained herein, the SFPUC may allocate to the Wholesale Customers as an allowable expense, utilizing the composite rate used for allocating other Water Enterprise administrative and general expenses, any attorneys' fees and costs incurred by the SFPUC in connection with arbitration and/or litigation arising under this Agreement and/or the Individual Water Sales Contracts. Attorneys' fees incurred by the SFPUC for attorneys employed in the San Francisco City Attorney's office shall be billed at the hourly rates charged for the attorneys in question by the San Francisco City Attorney's Office to the SFPUC. Attorneys' fees incurred by the SFPUC for attorneys other than those employed in the San Francisco City Attorney's Office shall be limited to the hourly rates charged to the SFPUC for attorneys and paralegals with comparable experience employed in the San Francisco City Attorney's office and in no event shall exceed the highest hourly rate charged by any attorney or paralegal employed in the City Attorney's Office to the SFPUC.

B. Arbitration or Litigation Outside of Agreement Concerning the SFPUC Water System or Reserved Issues

1. The attorneys' fees and costs incurred by the SFPUC in litigation between San Francisco and one or more of the Wholesale Customers arising from matters outside of the Agreement, including, without limitation, litigation and/or arbitration concerning the issues specifically reserved in the Agreement, shall be allocated between the Retail Customers and the

Wholesale Customers utilizing the composite rate used for allocating other Water Enterprise administrative and general expenses.

2. If, in any litigation described in subsection B.1 above, attorneys' fees and costs are awarded to one or more of the Wholesale Customers as prevailing parties, the SFPUC's payment of the Wholesale Customers' attorneys' fees and costs shall not be an allowable expense pursuant to subsection A.

3. If, in any litigation described in subsection B.1, the SFPUC obtains an award of attorneys' fees and costs as a prevailing party against one or more of the Wholesale Customers, any such award shall be reduced to offset the amount of the SFPUC's fees and costs, if any, that have already been paid by the Wholesale Customers in the current or any prior fiscal years pursuant to subsection B.1 and the provisions of Articles 5 and 6 of the Agreement.

4. Nothing contained in this Agreement, including this subsection, shall authorize a court to award attorneys' fees and costs to a prevailing party as a matter of contract and/or the provisions of Civil Code Section 1717, in litigation between San Francisco and one or more of the Wholesale Customers arising from matters outside of the Agreement, including, without limitation, litigation and/or arbitration concerning the issues specifically reserved in the Agreement.

C. **Attorneys Fees and Costs Incurred by the SFPUC in Connection with the Operation and Maintenance of the SFPUC Water Supply System**. All attorneys' fees and costs incurred by the SFPUC in connection with the operation and maintenance of the SFPUC's water supply system shall be allocated between Retail Customers and the Wholesale Customers utilizing the composite rate used for allocating other Water Enterprise administrative and general expenses.

8.03 Annual Meeting and Report

A. The parties wish to ensure that the Wholesale Customers may, in an orderly way, be informed of matters affecting the Regional Water System, including matters affecting the continuity and adequacy of their water supply from San Francisco.

For this purpose, the General Manager of the SFPUC shall meet annually with the Wholesale Customers and BAWSCA during the month of February, commencing

February 2010. At these annual meetings, the SFPUC shall provide the Wholesale Customers a report on the following topics:

1. Capital additions under construction or being planned for the Regional Water System, including the status of planning studies, financing plans, environmental reviews, permit applications, etc.;

2. Water use trends and projections for Retail Customers and Wholesale Customers;

3. Water supply conditions and projections;

4. The status of any administrative proceedings or litigation affecting San Francisco's water rights or the SFPUC's ability to deliver water from the watersheds which currently supply the Regional Water System;

5. Existing or anticipated problems with the maintenance and repair of the Regional Water System or with water quality;

6. Projections of Wholesale Revenue Requirements for the next five years;

7. Any other topic which the SFPUC General Manager places on the agenda for the meeting;

8. Any topic which the Wholesale Customers, through BAWSCA, request be placed on the agenda, provided that the SFPUC is notified of the request at least 10 days before the meeting.

B. The General Manager of the SFPUC, the Assistant General Manager of the Water Enterprise, and the Assistant General Manager of Business Services-CFO will use their best efforts to attend the annual meetings. If one or more of these officers are unable to attend, they will designate an appropriately informed assistant to attend in their place.

8.04 <u>Administrative Matters Delegated to BAWSCA</u>

A. The Wholesale Customers hereby delegate the authority and responsibility for performing the following administrative functions contemplated in this Agreement to BAWSCA:

1. Approval of calculations of Proportional Annual Water Use required by Section 3.14 and Attachment J, "Water Use Measurement and Tabulation";

2. Approval of amendments to Attachments J and K-3 and K-4, "25-Year Payoff Schedules for Existing Rate Base";

3. Agreement that the Water Meter and Calibration Procedures Manual to be prepared by the SFPUC may supersede some or all of the requirements in Attachment J, as described in Section 3.14;

4. Conduct of Wholesale Customer review of SFPUC's calculation of annual Wholesale Revenue Requirement/Change in Balancing Account described in Section 7.06;

5. Approval of an adjustment to Wholesale Revenue Coverage as described in Section 6.06.

B. A majority of the Wholesale Customers may, without amending this Agreement, delegate additional administrative functions to BAWSCA. To be effective, such expanded delegation must be evidenced by resolutions adopted by the governing bodies of a majority of the Wholesale Customers.

C. Unless otherwise explicitly stated, the administrative authority delegated to BAWSCA may be exercised by the General Manager/CEO of BAWSCA, rather than requiring action by the BAWSCA Board of Directors. In addition, the Wholesale Customers may, with the consent of BAWSCA, delegate to BAWSCA the initiation, defense, and settlement of arbitration proceedings provided for in Section 8.01.

8.05 <u>Preservation of Water Rights; Notice of Water Rights Proceedings</u>

A. It is the intention of San Francisco to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be construed as an abandonment, or evidence of an intent to abandon, any of the water rights that San Francisco presently possesses.

B. San Francisco shall use its best efforts to give prompt notice to BAWSCA of any litigation or administrative proceedings to which San Francisco is a party involving water rights to the Regional Water System. The failure of San Francisco to provide notice as required by this section, for whatever reason, shall not give rise to any monetary liability.

8.06 SFPUC Rules and Regulations

The sale and delivery of all water under this Agreement shall be subject to such of the "Rules and Regulations Governing Water Service to Customers" of the Water Enterprise adopted by the Commission, as those rules and regulations may be amended from time to time, as are (1) applicable to the sale and delivery of water to the Wholesale Customers, (2) reasonable, and (3) not inconsistent with either this Agreement or with an Individual Water Sales Contract. The SFPUC will give the Wholesale Customers notice of any proposal to amend the Rules and Regulations in a manner that would affect the Wholesale Customers. The notice will be delivered at least thirty days in advance of the date on which the proposal is to be considered by the Commission and will be accompanied by the text of the proposed amendment.

8.07 Reservations of, and Limitations on, Claims

A. **General Reservation of Raker Act Contentions**. The 1984 Agreement resolved a civil action brought against San Francisco by certain of the Wholesale Customers. Plaintiffs in that action contended that they, and other Wholesale Customers that are municipalities or special districts, were "co-grantees" within the meaning of Section 8 of the Act and were entitled to certain rights, benefits and privileges by virtue of that status. San Francisco disputed those claims.

Nothing in this Agreement, or in the Individual Water Sales Contracts, shall be construed or interpreted in any way to affect the ultimate resolution of the controversy between the parties concerning whether any of the Wholesale Customers are "co-grantees" under the Act and, if so, what rights, benefits and privileges accrue to them by reason of that claimed status.

B. **Claims Reserved but not Assertable During Term or Portions Thereof**. The following claims, which San Francisco disputes, are reserved but may not be asserted during the Term (or portions thereof, as indicated):

1. The Wholesale Customers' claim that the Act entitles them to water at cost.

2. The Wholesale Customers' claim that San Francisco is obligated under the Act or state law to supply them with additional water in excess of the Supply Assurance. This claim may not be asserted unless and until San Francisco decides not to meet projected

water demands of Wholesale Customers in excess of the Supply Assurance pursuant to Section 4.06.

3. The claim by San Jose and Santa Clara that they are entitled under the Act, or any other federal or state law, to permanent, non-interruptible status and to be charged rates identical to those charged other Wholesale Customers. This claim may not be asserted unless and until San Francisco notifies San Jose or Santa Clara that it intends to interrupt or terminate water deliveries pursuant to Section 4.05.

4. The Wholesale Customers' claim that the SFPUC is not entitled to impose a surcharge for lost power generation revenues attributable to furnishing water in excess of the Supply Assurance. This claim may not be asserted unless and until SFPUC furnishes water in excess of the Supply Assurance during the Term and also includes such a surcharge in the price of such water.

5. Claims by Wholesale Customers (other than San Jose and Santa Clara, whose service areas are fixed) that SFPUC is obligated under the Act or state law to furnish water, within their Individual Supply Guarantee, for delivery to customers outside their existing service area and that Wholesale Customers are entitled to enlarge their service areas to supply those customers. Such claims may be asserted only after compliance with the procedure set forth in Section 3.03, followed by SFPUC's denial of, or failure for six months to act on, a written request by a Wholesale Customer to expand its service area.

C. **Waived Activities**. The Wholesale Customers (and the SFPUC, where specified) will refrain from the following activities during the Term (or portions thereof, as specified):

1. The Wholesale Customers and the SFPUC will not contend before any court, administrative agency or legislative body or committee that the methodology for determining the Wholesale Revenue Requirement (or the requirements for (a) amortization of the ending balance under the 1984 Agreement, or (b) contribution to the Wholesale Revenue Coverage) determined in accordance with this Agreement violates the Act or any other provision of federal law, state law, or San Francisco's City Charter, or is unfair, unreasonable or unlawful.

2. The Wholesale Customers will not challenge the transfer of funds by the SFPUC to any other San Francisco City department or fund, provided such transfer complies with the San Francisco City Charter. The transfer of its funds, whether or not permitted by the

City Charter, will not excuse the SFPUC from its failure to perform any obligation imposed by this Agreement.

3. The Wholesale Customers and the SFPUC will not assert monetary claims against one another based on the 1984 Agreement other than otherwise arbitrable claims arising from the three fiscal years immediately preceding the start of the Term (i.e., FYs 2006-07, 2007-08 and 2008-09). Such claims, if any, shall be governed by the dispute resolution provisions of this Agreement, except that the time within which arbitration must be commenced shall be 18 months from delivery of the Compliance Auditor's report.

D. Other

1. This Agreement shall determine the respective monetary rights and obligations of the parties with respect to water sold by the SFPUC to the Wholesale Customers during the Term. Such rights and obligations shall not be affected by any judgments or orders issued by any court in litigation, whether or not between parties hereto, and whether or not related to the controversy over co-grantee status, except for arbitration and/or litigation expressly permitted in this Agreement. No judicial or other resolution of issues reserved by this section will affect the Wholesale Revenue Requirement which, during the Term, will be determined exclusively as provided in Articles 5, 6 and 7 of this Agreement.

2. Because delays in the budget process or other events may cause the SFPUC to defer the effective date of changes in wholesale rates until after the beginning of the fiscal year, this Agreement does not require the SFPUC to make changes in wholesale rates effective at the start of the fiscal year or at any other specific date.

3. The Wholesale Customers do not, by executing this Agreement, concede the legality of the SFPUC's establishing Interim Supply Allocations, as provided in Article 4 or imposing Environmental Enhancement Surcharges on water use in excess of such allocations. Any Wholesale Customer may challenge such allocation when imposed and/or such surcharges if and when levied, in any court of competent jurisdiction.

4. The furnishing of water in excess of the Supply Assurance by San Francisco to the Wholesale Customers shall not be deemed or construed to be a waiver by San Francisco of its claim that it has no obligation under any provision of law to supply such water to the Wholesale Customers, nor shall it constitute a dedication by San Francisco to the Wholesale Customers of such water.

8.08 Prohibition of Assignment

A. This Agreement shall be binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns. Each Wholesale Customer agrees that it will not transfer or assign any rights or privileges under this Agreement, either in whole or in part, or make any transfer of all or any part of its water system or allow the use thereof in any manner whereby any provision of this Agreement will not continue to be binding on it, its assignee or transferee, or such user of the system. Any assignment or transfer in violation of this covenant, and any assignment or transfer that would result in the supply of water in violation of the Act, shall be void.

B. Nothing in this section shall prevent any Wholesale Customer (except the California Water Service Company and Stanford) from entering into a joint powers agreement or a municipal or multi-party water district with any other Wholesale Customer (except the two listed above) to exercise the rights and obligations granted to and imposed upon the Wholesale Customers hereunder, nor shall this section prevent any Wholesale Customer (except the two listed above) from succeeding to the rights and obligations of another Wholesale Customer hereunder as long as the Wholesale Service Area served by the Wholesale Customers involved in the succession is not thereby enlarged.

8.09 Notices

A. All notices and other documents that San Francisco is required or permitted to send to the Wholesale Customers under this Agreement shall be sent to each and all of the Wholesale Customers by United States mail, first class postage prepaid, addressed to each Wholesale Customer at the address to which monthly water bills are mailed by the Water Enterprise.

B. All notices or other documents which the Wholesale Customers are required or permitted to send to San Francisco under this Agreement shall be sent by United States mail, first class postage prepaid, addressed as follows:

General Manager
San Francisco Public Utilities Commission
1155 Market Street, 11th Floor
San Francisco, CA 94103

C. Each Wholesale Customer is a member of BAWSCA. San Francisco shall send a copy of each notice or other document which it is required to send to all Wholesale Customers to BAWSCA addressed as follows:

General Manager/CEO
Bay Area Water Supply and Conservation Agency
155 Bovet Road, Suite 302
San Mateo, CA 94402

The failure of San Francisco to send a copy of such notices or documents to BAWSCA shall not invalidate any rate set or other action taken by San Francisco.

D. Any party (or BAWSCA) may change the address to which notice is to be sent to it under this Agreement by notice to San Francisco (in the case of a change desired by a Wholesale Customer or BAWSCA) and to the Wholesale Customer and BAWSCA (in the case of a change desired by San Francisco).

The requirements for notice set forth in Section 8.01 concerning arbitration shall prevail over this section, when they are applicable.

8.10 Incorporation of Attachments

Attachments A through Q, referred to herein, are incorporated in and made a part of this Agreement.

8.11 Interpretation

In interpreting this Agreement, or any provision thereof, it shall be deemed to have been drafted by all signatories, and no presumption pursuant to Civil Code Section 1654 may be invoked to determine the Agreement's meaning. The marginal headings and titles to the sections and paragraphs of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

8.12 Actions and Approvals by San Francisco

Whenever action or approval by San Francisco is required or contemplated by this Agreement, authority to act or approve shall be exercised by the Commission, except if such action is required by law to be taken, or approval required to be given, by the San Francisco Board of Supervisors. The Commission may delegate authority to the General Manager in

accordance with the San Francisco City Charter and Administrative Code, except for actions that this Agreement requires to be taken by the Commission.

8.13 Counterparts

Execution of this Agreement may be accomplished by execution of separate counterparts by each signatory. San Francisco shall deliver its executed counterpart to BAWSCA and the counterpart which each Wholesale Customer executes shall be delivered to San Francisco. The separate executed counterparts, taken together, shall constitute a single agreement.

8.14 Limitations on Damages

A. Unless otherwise prohibited by this Agreement, general or direct damages may be recovered for a breach of a party's obligations under this Agreement. No party is liable for, or may recover from any other party, special, indirect or consequential damages or incidental damages, including, but not limited to, lost profits or revenue. No damages may be awarded for a breach of Section 8.17.

B. The limitations in subsection A apply only to claims for damages for an alleged breach of this Agreement. These limitations do not apply to claims for damages for an alleged breach of a legal duty that arises independently of this Agreement, established by constitution or statute.

C. If damages would be an inadequate remedy for a breach of this Agreement, equitable relief may be awarded by a court in a case in which it is otherwise proper.

D. This section does not apply to any claim of breach for which arbitration is the exclusive remedy pursuant to Section 8.01.A.

8.15 Force Majeure

A. Excuse from Performance. No party shall be liable in damages to any other party for delay in performance of, or failure to perform, its obligations under this Agreement, including the obligations set forth in Sections 3.09 and 4.06, if such delay or failure is caused by a "Force Majeure Event."

B. Notice. The party claiming excuse shall deliver to the other parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force

Majeure Event. Notice required by this section shall be given promptly in light of the circumstances, and, in the case of events described in (c), (d) or (e) of the definition of Force Majeure Event only, not later than ten (10) days after the occurrence of the Force Majeure Event. Such notice shall describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform.

C. **Obligation to Restore Ability to Perform**. Any suspension of performance by a party pursuant to this section shall be only to the extent, and for a period of no longer duration than, required by the nature of the Force Majeure Event, and the party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible.

8.16 No Third-Party Beneficiaries

This Agreement is exclusively for the benefit of the parties and not for the benefit of any other Person. There are no third-party beneficiaries of this Agreement and no person not a party shall have any rights under or interests in this Agreement.

No party may assert a claim for damages on behalf of a person other than itself, including a person that is not a party.

8.17 Good Faith and Fair Dealing

San Francisco and the Wholesale Customers each acknowledge their obligation under California law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

Article 9. Implementation and Special Provisions Affecting Certain Wholesale Customers

9.01 General; Individual Water Sales Contracts

A. As described in Section 1.03, San Francisco previously entered into Individual Water Sales Contracts with each of the Wholesale Customers. The term of the majority of Individual Water Sales Contracts will expire on June 30, 2009, concurrently with the expiration of the 1984 Agreement. Except as provided below in this Article, each of the Wholesale Customers will execute a new Individual Water Sales Contract with San Francisco concurrently with its approval of the Agreement.

B. The Individual Water Sales Contracts will describe the service area of each Wholesale Customer, identify the location and size of connections between the Regional Water System and the Wholesale Customer's distribution system, provide for periodic rendering and payment of bills for water usage, and in some instances contain additional specialized provisions unique to the particular Wholesale Customer and not of general concern or applicability. A sample Individual Water Sales Contract is provided at Attachment F. The Individual Water Sales Contracts between San Francisco and the Wholesale Customers will not contain any provision inconsistent with Articles 1 through 8 of this Agreement except (1) as provided below in this Article or (2) to the extent that such provisions are not in derogation of the Fundamental Rights of other Wholesale Customers under this Agreement. Any provisions in an Individual Water Sales Contract which are in violation of this section shall be void.

9.02 California Water Service Company

A. The parties recognize that the California Water Service Company is an investor-owned utility company and, as such, has no claim to co-grantee status under the Act, which specifically bars private parties from receiving for resale any water produced by the Hetch Hetchy portion of the Regional Water System. Accordingly, the following provisions shall apply to the California Water Service Company, notwithstanding anything to the contrary elsewhere in this Agreement.

B. The total quantity of water delivered by San Francisco to the California Water Service Company shall not in any calendar year exceed 47,400 acre feet, which is the estimated average annual production of Local System Water. If San Francisco develops additional Local System Water after the Effective Date, it may (1) increase the maximum

delivery amount stated herein; and (2) increase the Supply Assurance, but not necessarily both. San Francisco has no obligation to deliver water to California Water Service Company in excess of the maximum stated herein, except as such maximum may be increased by San Francisco pursuant to this subsection. The maximum annual quantity of Local System Water set forth in this subsection is intended to be a limitation on the total quantity of water that may be allocated to California Water Service Company, and is not an Individual Supply Guarantee for purposes of Section 3.02. The maximum quantity of Local System Water set forth in this subsection is subject to reduction in response to (1) changes in long-term hydrology or (2) environmental water requirements that may be imposed by or negotiated with state and federal resource agencies in order to comply with state or federal law or to secure applicable permits for construction of Regional Water System facilities. San Francisco shall notify California Water Service Company of any anticipated reduction of the quantity of Local System Water set forth in this subsection, along with an explanation of the basis for the reduction.

C. Notwithstanding anything in Section 8.08 to the contrary, California Water Service Company shall have the right to assign to a public agency having the power of eminent domain all or a portion of the rights of California Water Service Company under any contract between it and San Francisco applicable to any individual district of California Water Service Company in connection with the acquisition by such public agency of all or a portion of the water system of California Water Service Company in such district. In the event of any such assignment of all the rights, privileges and obligations of California Water Service Company under such contract, California Water Service Company shall be relieved of all further obligations under such contract provided that the assignee public agency expressly assumes the obligations of California Water Service Company thereunder. In the event of such an assignment of a portion of the rights, privileges and obligations of California Water Service Company under such contract, California Water Service Company shall be relieved of such portion of such obligations so assigned thereunder provided that the assignee public agency shall expressly assume such obligations so assigned to it.

D. Should California Water Service Company seek to take over or otherwise acquire, in whole or in part, the service obligations of another Wholesale Customer under Section 3.03.E, it will so inform San Francisco at least six months prior to the effective date of the sale and provide information concerning the total additional demand proposed to be served, in order that San Francisco may compare the proposed additional demand to the then-current estimate of Local System Water. In this regard, California Water Service Company has notified

the SFPUC that it has reached an agreement to acquire the assets of Skyline County Water District ("Skyline") and assume the responsibility for providing water service to customers in the Skyline service area. California Water Service Company has advised the SFPUC that, on September 18, 2008, the California Public Utilities Commission approved California Water Service Company's acquisition of Skyline. The SFPUC anticipates approving the transfer of Skyline's Supply Guarantee as shown on Attachment C to California Water Service Company and the expansion of California Water Service Company's service area to include the current Skyline service area before the Effective Date of this Agreement. All parties to this Agreement authorize corresponding modifications of Attachment C, as well as any of the Agreement's other provisions, to reflect the foregoing transaction without the necessity of amending this Agreement.

E. Nothing in this Agreement shall preclude San Francisco from selling water to any county, city, town, district, political subdivision, or other public agency for resale to customers within the service area of the California Water Service Company. Nothing in this Agreement shall require or contemplate any delivery of water to California Water Service Company in violation of the Act.

F. Nothing in this Agreement shall alter, amend or modify the Findings of Fact and Conclusions of Law and the Judgment dated May 25, 1961, in that certain action entitled *City and County of San Francisco v. California Water Service Company* in the Superior Court of the State of California in and for the County of Marin, No. 23286, as modified by the Quitclaim Deed from California Water Service Company to San Francisco dated August 22, 1961. The rights and obligations of San Francisco and California Water Service Company under these documents shall continue as therein set forth.

9.03 <u>City of Hayward</u>

A. San Francisco and the City of Hayward ("Hayward") entered into a water supply contract on February 9, 1962 ("the 1962 contract") which provides, *inter alia*, that San Francisco will supply Hayward with all water supplemental to sources and supplies of water owned or controlled by Hayward as of that date, in sufficient quantity to supply the total water needs of the service area described on an exhibit to the 1962 contract "on a permanent basis." The service area map attached as Exhibit C to the 1962 contract was amended in 1974 to remove an area of land in the Hayward hills and in 2008 to make minor boundary adjustments identified in SFPUC Resolution No. 08-0035.

B. The intention of the parties is to continue the 1962 contract, as amended, in effect as the Individual Water Sales Contract between San Francisco and Hayward. Accordingly, it shall not be necessary for San Francisco and Hayward to enter into a new Individual Water Sales Contract pursuant to this Article and approval of this Agreement by Hayward shall constitute approval of both this Agreement and an Individual Water Sales Contract for purposes of Section 1.03. The 1962 contract, as amended, will continue to describe the service area of Hayward, while rates for water delivered to Hayward during the Term shall be governed by Article 5 hereof. The 1962 contract, as amended, will continue in force after the expiration of the Term.

9.04 Estero Municipal Improvement District

A. San Francisco and the Estero Municipal Improvement District ("Estero") entered into a water supply contract on August 24, 1961, the term of which continues until August 24, 2011 ("the 1961 Contract"). The 1961 Contract provides, *inter alia*, that San Francisco will supply Estero with all water supplemental to sources and supplies of water owned or controlled by Estero as of that date, in sufficient quantity to supply the total water needs of the service area described on an exhibit to the 1961 Contract.

B. The intention of the parties is to terminate the 1961 Contract and replace it with a new Individual Water Sales Contract which will become effective on July 1, 2009. The new Individual Water Sales Contract will describe the current service area of Estero. The Individual Supply Guarantee applicable to Estero shall be 5.9 MGD, rather than being determined as provided in the 1961 Contract.

9.05 Stanford University

A. The parties recognize that The Board of Trustees of The Leland Stanford Junior University ("Stanford") operates a non-profit university, and purchases water from San Francisco for redistribution to the academic and related facilities and activities of the university and to residents of Stanford, the majority of whom are either employed by or students of Stanford. Stanford agrees that all water furnished by San Francisco shall be used by Stanford only for domestic purposes and those directly connected with the academic and related facilities and activities of Stanford, and no water furnished by San Francisco shall be used in any area now or hereafter leased or otherwise used for industrial purposes or for commercial purposes other than those campus support facilities that provide direct services to Stanford faculty, students or staff such as the U.S. Post Office, the bookstore and Student Union.

Nothing in this Agreement shall preclude San Francisco from selling water to any county, city, town, political subdivision or other public agency for resale to Stanford or to customers within the service area of Stanford.

B. Notwithstanding anything in Section 8.08 to the contrary, Stanford shall have the right to assign to a public agency having the power of eminent domain all or a portion of the rights of Stanford under this Agreement or the Individual Water Sales Contract between it and San Francisco in connection with the acquisition by such public agency of all or a portion of Stanford's water system. In the event of any such assignment of all the rights, privileges, and obligations of Stanford under such contract, Stanford shall be relieved of all further obligations under such contract, provided that the assignee public agency expressly assumes Stanford's obligations thereunder. In the event of such an assignment of a portion of the rights, privileges, and obligations of Stanford under such contract, Stanford shall be relieved of such obligations so assigned thereunder, provided that the assignee public agency shall expressly assume such obligations so assigned to it.

Nothing in this Agreement shall require or contemplate any delivery of water to Stanford in violation of the Act.

9.06 <u>City of San Jose and City of Santa Clara</u>

A. <u>Continued Supply on Temporary, Interruptible Basis</u>. During the term of the 1984 Agreement, San Francisco provided water to the City of San Jose ("San Jose") and the City of Santa Clara ("Santa Clara") on a temporary, interruptible basis pursuant to SFPUC Resolution No. 85-0256. Subject to termination or reduction of supply as provided in Section 4.05 of this Agreement, San Francisco will continue to supply water to San Jose and Santa Clara on a temporary, interruptible basis pending a decision by the Commission, pursuant to Section 4.05.H, as to whether to make San Jose and Santa Clara permanent customers of the Regional Water System. San Francisco will furnish water to San Jose and Santa Clara at the same rates as those applicable to other Wholesale Customers pursuant to this Agreement. Water delivered to San Jose and Santa Clara after July 1, 2009 may be limited by the SFPUC's ability to meet the full needs of all its other Retail and Wholesale Customers. The service areas of San Jose and Santa Clara set forth in their Individual Water Sales Contracts may not be expanded using the procedure set forth in Section 3.03. The combined annual average water usage of San Jose and Santa Clara shall not exceed 9 MGD. The allocation of that total

amount between San Jose and Santa Clara shall be as set forth in their Individual Water Sales Contracts.

B. **Reservation of Rights.** In signing this Agreement, neither San Jose nor Santa Clara waives any of its rights to contend, in the event that San Francisco (1) elects to terminate or interrupt water deliveries to either or both of the two cities prior to 2018 using the process set forth in Section 4.05, or (2) does not elect to take either city on as a permanent customer in 2018, that it is entitled to permanent customer status, pursuant to the Act or any other federal or state law. In signing this Agreement, San Francisco does not waive its right to deny any or all such contentions.

9.07 City of Brisbane, Guadalupe Valley Municipal Improvement District, Town of Hillsborough

A. The parties acknowledge that San Francisco has heretofore provided certain quantities of water to the City of Brisbane ("Brisbane"), Guadalupe Valley Municipal Improvement District ("Guadalupe") and the Town of Hillsborough ("Hillsborough") at specified rates or without charge pursuant to obligations arising out of agreements between the predecessors of San Francisco and these parties, which agreements are referred to in judicial orders, resolutions of the SFPUC and/or the 1960 contracts between San Francisco and Brisbane, Guadalupe and Hillsborough. The parties intend to continue those arrangements and accordingly agree as follows:

1. Nothing in this Agreement is intended to alter, amend or modify the terms of SFPUC Resolution No. 74-0653 or the indenture of July 18, 1908 between the Guadalupe Development Company and the Spring Valley Water Company.

2. Nothing in this Agreement is intended to alter, amend or modify the Findings of Fact and Conclusions of Law and Judgment dated May 25, 1961 in that certain action entitled *City and County of San Francisco v. Town of Hillsborough* in the Superior Court of the State of California in and for the County of Marin, No. 23282, as modified by the Satisfaction of Judgment filed October 23, 1961 and the Compromise and Release between Hillsborough and San Francisco dated August 22, 1961. The rights and obligations of Hillsborough under these documents shall continue as therein set forth.

3. Nothing in this Agreement is intended to affect or prejudice any claims, rights or remedies of Guadalupe or of Crocker Estate Company, a corporation, or of Crocker

Land Company, a corporation, or of San Francisco, or of their successors and assigns, respectively, with respect to or arising out of that certain deed dated May 22, 1884, from Charles Crocker to Spring Valley Water Works, a corporation, recorded on May 24, 1884, in Book 37 of Deeds at page 356, Records of San Mateo County, California, as amended by that certain Deed of Exchange of Easements in Real Property and Agreement for Trade in Connection Therewith, dated July 29, 1954, recorded on August 4, 1954, in Book 2628, at page 298, Official Records of said San Mateo County, or with respect to or arising out of that certain action involving the validity or enforceability of certain provisions of said deed entitled *City and County of San Francisco v. Crocker Estate Company*, in the Superior Court of the State of California in and for the County of Marin, No. 23281.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities Commission

By: _____
Edward Harrington
General Manager

Date: July 17, 2009

Approved by Commission Resolution No. 09-0069, adopted April 28, 2009

_____
Michael Housh
Secretary to Commission

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Joshua D. Milstein
Deputy City Attorney

CITY OF SANTA CLARA

By: _____
Jennifer Sparacino
City Manager

Date: June 30, 2009

Attest: Approved by City Council Resolution No. 09-7639, adopted on June 9, 2009

_____
Rod Diridon Jr.
City Clerk

Approved as to form:

By: _____
Helene L. Leichter
City Attorney

Attachment A - Definitions

"1984 Agreement" refers to the 1984 Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and certain Suburban Purchasers in San Mateo County, Santa Clara County and Alameda County, which expires on June 30, 2009.

"Act" refers to the Raker Act, 38 Stat. 242, the Act of Congress, enacted in 1913, that authorized the construction of the Hetch Hetchy system on federal lands.

"Adjusted Proportional Annual Use" means the respective percentages of annual water use, as adjusted to reflect deliveries of water by the Hetch Hetchy Enterprise to outside City Retail Customers. The adjustment is calculated each year as described in Section B of Attachment J and is shown on lines 18 and 19 of Table 1 of that Attachment.

"Agreement" refers to this Water Supply Agreement, by and among San Francisco and the Wholesale Customers who approve this Agreement in accordance with Section 1.03.

"BAWSCA" refers to the Bay Area Water Supply and Conservation Agency established pursuant to Division 31 of the California Water Code (Water Code §§81300-81461) or its successor and permitted assigns.

"CEQA" refers to the California Environmental Quality Act found at §§21000 et seq. of the Public Resources Code and the Guidelines for the California Environmental Quality Act found at §§15000 et seq. of Title 14 of the California Code of Regulations, as amended from time to time.

"Commission" means the governing board of the SFPUC, whose members, as of the date of this Agreement, are appointed by the Mayor of San Francisco and confirmed by the San Francisco Board of Supervisors.

"Compliance Audit" refers to the annual audit of the Wholesale Revenue Requirement by the Compliance Auditor required by Sections 7.03 through 7.05.

"Compliance Auditor" refers to the independent certified public accountant chosen by the San Francisco Controller to conduct each fiscal year's audit of the SFPUC's calculation of the Wholesale Revenue Requirement as provided in Section 7.03.B.

"Countywide Cost Allocation Plan" refers to the full costs of the Water and Hetch Hetchy Enterprises' prorated share of San Francisco city government expenses that are not directly billed to city departments, as determined by the Controller of the City and County of San Francisco.

"Debt Service" means principal and interest paid during a fiscal year on Indebtedness incurred by the SFPUC for the 2006 Revenue Bonds, Series A, and subsequently issued Indebtedness (exclusive of 2006 Revenue Bonds Series B and C), the proceeds of which are used or are scheduled to be used for the acquisition or construction of New Regional Assets or to refund such Indebtedness.

"Direct Retail" refers to Regional Water System capital or operating expenditures that are incurred to provide water service solely to Retail Customers.

"Direct Wholesale" refers to Regional Water System capital or operating expenditures that are incurred to provide water service solely to one or more Wholesale Customers.

"Drought" means a water shortage caused by lack of precipitation, as reflected in resolutions of the Commission calling for voluntary or mandatory water rationing based on evaluation of water stored or otherwise available to the Regional Water System, whether or not the Commission declares a water shortage emergency pursuant to Water Code §§ 350 et seq., as amended from time to time.

"Effective Date" refers to the date this Agreement will become effective in accordance with the terms of Section 1.03.

"Emergency" means a sudden, non-drought event, such as an earthquake, failure of Regional Water System infrastructure or other catastrophic event or natural disaster that results in an insufficient supply of water available to the Retail or Wholesale Service Areas for basic human consumption, firefighting, sanitation, and fire protection.

"Encumbrance" or **"Encumber"** refers to the process by which the City Controller certifies the availability of amounts previously appropriated by the Commission for specifically identified SFPUC capital projects performed either by third parties or through work orders to other City departments.

"Environmental Enhancement Surcharge" means the surcharge to be imposed by the SFPUC on individual parties to this Agreement whose use exceeds their Interim Supply Allocation when the collective use of water by all parties to this Agreement is in excess of the Interim Supply Limitation.

"ERRP" refers to a SFPUC document entitled *Emergency Response and Recovery Plan: Regional Water System* ("ERRP") dated August 23, 2003, and updated November 2006.

"Excess Use Charges" are monthly charges set by the SFPUC, in the form of multipliers, that are applied to the Wholesale Customer water rates during times of mandatory rationing if a Wholesale Customer's water usage is greater than its shortage allocation. Excess Use Charges are further described in Section 4 of the Tier 1 Shortage Plan (Attachment H).

"Existing Assets" refers to Regional and Hetch Hetchy Water-Only and Water-Related capital assets plant in service as of June 30, 2009.

"Force Majeure Event" means an event not the fault of, and beyond the reasonable control of, the party claiming excuse which makes it impossible or extremely impracticable for such party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an "act of God" such as an earthquake, flood, earth movement, or similar catastrophic event, (b) an act of the public enemy, terrorism, sabotage, civil disturbance or similar event, (c) a strike, work stoppage, picketing or similar concerted labor action, (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts; or (e) an order or regulation issued by a federal or state regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

"Fundamental Rights" of Wholesale Customers are their status as parties to this Agreement, their allocation of water recognized in Section 3.02, their protection against arbitrary, unreasonable, or unjustly discriminatory rates provided in Section 6.04, and any specific rights described in Article 9.

"Hetch Hetchy Enterprise" refers to Hetch Hetchy Water and Power Enterprise, a SFPUC operating department.

"Include" and its variants mean "including but not limited to" whenever used in this Agreement, regardless of whether or not it is capitalized.

"Indebtedness" includes revenue bonds, bond anticipation notes, certificates of participation (excluding certificates of participation towards which SFPUC contributes debt service as an operating expense), and commercial paper.

"Individual Water Sales Contract" refers to the contracts between each Wholesale Customer and San Francisco contemplated in Section 9.01 that details customer-specific matters such as location of service connections, service area maps and other matters specific to that customer.

"Individual Supply Guarantee" refers to each Wholesale Customer's share of the Supply Assurance, as shown in Attachment C.

"Interim Supply Allocation" refers to each Wholesale Customer's share, to be established by the SFPUC pursuant to Section 4.02, of the Interim Supply Limitation.

"Interim Supply Limitation" refers to the 265 MGD annual average limitation on water deliveries until December 31, 2018 from Regional Water System watersheds imposed by the SFPUC in its approval of the WSIP in Resolution Number 08-0200 dated October 30, 2008.

"Joint," when used in connection with Hetch Hetchy Enterprise assets or expenses, refers to assets used or expenses incurred in providing both water supply ("Water-Related") and in the generation and transmission of electrical energy ("Power-Related").

"Local System Water" refers to Regional Water System water supplies developed in San Mateo, Alameda and Santa Clara Counties or otherwise not produced by the Hetch Hetchy Enterprise under rights of way granted by the Raker Act.

"MGD" refers to an average flow rate of one million gallons per day over a specific time period, often a year. For example, one MGD is equal to 365 million gallons per year or 1,120 acre feet per year.

"Net Annual Debt Service" refers to debt service less payments made from proceeds of Indebtedness (e.g., capitalized interest), earnings on bond proceeds (e.g., reserve fund earnings) used to pay Debt Service, and interest paid from renewed commercial paper, or from reserve fund liquidation.

"New Assets" refers to Regional and Hetch Hetchy Water-Only and Water-Related capital assets added to Regional Water System plant in service after June 30, 2009.

"New Regional Assets" refers to New Assets placed in service on or after July 1, 2009 that are used and useful in delivering water to Wholesale Customers. The following four categories comprise New Regional Assets:

1. Water Enterprise Regional Assets
2. Water Enterprise Direct Wholesale Assets
3. Hetch Hetchy Water Only Assets
4. Water-Related portion (45 percent) of Hetch Hetchy Joint Assets

"Power-Only," when used with reference to Hetch Hetchy Enterprise capital costs and operating and maintenance expenses, means capital costs and expenses that are incurred solely for the construction and operation of assets used to generate and transmit electrical energy.

"Power-Related" refers to the power related portion (55%) of Joint Hetch Hetchy Enterprise assets or expenses.

"Prepayment" refers to payments of principal and interest amounts not due in the year the prepayment is made, as described in Section 5.03.

"Proportional Annual Use" means the shares of deliveries from the Regional Water System used by City Retail Customers and by the Wholesale Customers in a fiscal year, expressed as a percentage. The percentages of annual use are calculated each year as described in Section B of Attachment J and are shown on lines 10 and 11 of Table 1 of that Attachment.

"Proportional Water Use" refers the general principle of allocating Regional Water System costs based on the relative purchases of water by Retail and Wholesale Customers.

"Regional," when used with reference to Water Enterprise capital assets and operating expenses, refers to assets and expenses that benefit Wholesale and Regional Customers.

"Regional Water System" means the water storage, transmission and treatment system operated by the SFPUC in Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo and San Francisco counties, including projects constructed under the WSIP, but excluding Direct Retail and Direct Wholesale assets.

"Retail Customers" means any customer that purchases water from San Francisco that is not a Wholesale Customer, whether located inside or outside of San Francisco.

"Retail Service Area" means the areas where SFPUC sells water to Retail Customers.

"Retail Water" means water sold by the SFPUC to its Retail Customers within and outside San Francisco.

"San Francisco" refers to the City and County of San Francisco.

"SFPUC" refers to the San Francisco Public Utilities Commission as an operating department of San Francisco, the General Manager of which reports to the Commission.

"SFPUC Bureaus" refers to the portions of the SFPUC that provide support services to the SFPUC Operating Departments. These presently consist of the General Manager's Office, Business Services, and External Affairs.

"SFPUC Operating Departments" refers to the Water, Hetch Hetchy and Wastewater Program Enterprises under the control and management of the SFPUC pursuant to the San Francisco Charter.

"Substantially Expended": A bond issue series is substantially expended when 98% of the proceeds and investment earnings contributed to the project fund have been expended.

"Supply Assurance" means the 184 MGD maximum annual average metered supply of water dedicated by San Francisco to public use in the Wholesale Service Area (not including San Jose and Santa Clara) in the 1984 Agreement and Section 3.01 of this Agreement.

"Term" means the 25-year term commencing July 1, 2009, including one or both 5-year extensions authorized by Section 2.02.A and B.

"Tier 1 Shortage Plan" refers to the Water Shortage Allocation Plan (Attachment H) adopted by the SFPUC and the Wholesale Customers in conjunction with this Agreement describing the method for allocating water between the SFPUC and the Wholesale Customers collectively for shortages of up to 20% of deliveries from the Regional Water System, as amended from time-to-time.

"Water Enterprise" refers to the San Francisco Water Department (SFWD), an SFPUC Operating Department.

"Water Management Charge" refers to the charge collected by San Francisco on behalf of BAWSCA for local water resource development in the Wholesale Service Area pursuant to Section 3.06 of this Agreement.

"Water-Only," when used with reference to Hetch Hetchy Enterprise capital costs and operating and maintenance expenses, means capital costs and expenses that are incurred solely for the construction and operation of assets used to protect water quality or to provide for the delivery of water for consumptive purposes.

"Water-Related" refers to the water related portion (45%) of Joint Hetch Hetchy Enterprise assets or expenses.

"Water Supply Development Report" refers to the annual report prepared pursuant to Section 4.05, and submitted to the Commission for purposes of estimating whether Regional Water System demand will be within the Interim Supply Limitation by June 30, 2018.

"Wheeling Statute" refers to Article 4 of Chapter 11 of the California Water Code, as amended from time to time.

"Wholesale Capital Fund" is the account established by the SFPUC for deposit of Wholesale Customer revenue that is used to fund the wholesale share of revenue-funded New Regional Assets, as described in Section 6.08.

"Wholesale Customer" or "Customers" means one or more of the 27 water customers identified in Section 1.01 that are contracting for purchase of water from San Francisco pursuant to this Agreement.

"Wholesale Revenue Coverage" refers to the additional dollar amount included in wholesale rates each fiscal year that is charged to Wholesale Customers by the SFPUC for their proportionate share of Debt Service coverage under Section 6.06.A.

"Wholesale Revenue Coverage Reserve" refers to the account established by the SFPUC for deposit of Wholesale Revenue Coverage under Section 6.06.B.

"Wholesale Revenue Requirement" means the calculated Wholesale Customer portion of SFPUC Regional Water System capital and operating costs as determined in accordance with the provisions of Article 5 of this Agreement, formerly called the "Suburban Revenue Requirement" in the 1984 Agreement.

"Wholesale Service Area" means the combined service areas of the Wholesale Customers, as delineated on the service area maps attached to each Individual Water Sales Contract.

"WSIP" refers to the Water System Improvement Program approved by the Commission in Resolution No. 08-0200 on October 30, 2008, as amended from time to time. .

ATTACHMENT B

WHOLESALE CUSTOMER REGIONAL WATER SYSTEM PURCHASES FY 2007-2008*

(To determine 75% approval process for Section 1.02)

WHOLESALE CUSTOMER	MGD
Alameda County Water District	12.90
California Water Service Company	37.72
City of Brisbane	0.23
City of Burlingame	4.50
City of Daly City	4.49
City of East Palo Alto	2.16
City of Hayward	19.33
City of Menlo Park	3.69
City of Millbrae	2.46
City of Milpitas	6.95
City of Mountain View	10.51
City of Palo Alto	12.72
City of Redwood City	11.01
City of San Bruno	1.86
City of San Jose	4.80
City of Santa Clara	3.49
City of Sunnyvale	10.52
Coastside County Water District	2.08
Estero Municipal Improvement District	5.51
Guadalupe Valley Municipal Improvement District	0.40
Mid-Peninsula Water District	3.25
North Coast County Water District	3.25
Purissima Hills Water District	2.31
Skyline County Water District	0.16
Stanford University	2.31
Town of Hillsborough	3.83
Westborough Water District	0.95
Total	173.39

*Source: SFPUC Commercial Division Records
Note: FY 2007-2008 was a Leap Year with 366 days.

ATTACHMENT C

INDIVIDUAL SUPPLY GUARANTEES

WHOLESALE CUSTOMER	(1) 100 Cubic Feet *	(2) MGD
Alameda County Water District	6,714,439	13.760
California Water Service Company**	17,320,807	35.499
City of Brisbane	224,435	0.460
City of Burlingame	2,553,753	5.234
City of Daly City	2,094,386	4.292
City of East Palo Alto	957,813	1.963
City of Menlo Park	2,174,231	4.456
City of Millbrae	1,538,120	3.152
City of Milpitas	4,504,533	9.232
City of Mountain View	6,567,648	13.460
City of Palo Alto	8,331,697	17.075
City of Redwood City	5,333,115	10.930
City of San Bruno	1,583,899	3.246
City of Sunnyvale	6,138,122	12.580
Coastside County Water District	1,061,453	2.175
Estero Municipal Improvement District	2,878,807	5.900
Guadalupe Valley Municipal Improvement District	254,436	0.521
Mid-Peninsula Water District	1,898,707	3.891
North Coast County Water District	1,872,928	3.838
Purissima Hills Water District	792,832	1.625
Skyline County Water District	88,537	0.181
Stanford University	1,479,764	3.033
Town of Hillsborough	1,995,644	4.090
Westborough Water District	644,172	1.320
Total:***	79,004,278	161.913

* 100 Cubic feet equals MGD divided by 0.00000204946. Figures in this column are calculated using unrounded MGD values and are more precise than the figures listed in column (2).

** Includes quantities from Los Trancos County Water District and Palomar Park Water District.

*** Total does not equal sum of MGD figures due to rounding. Total is not 184 MGD because table does not include the City of Hayward.

**** Cordilleras Mutual Water Association is not a party to this Agreement, but it has its own Supply Assurance of 3,007 hundred cubic feet (CCF).

ATTACHMENT D

PROCEDURE FOR PRO-RATA REDUCTION OF WHOLESALE CUSTOMERS' INDIVIDUAL SUPPLY GUARANTEES (SECTION 3.02).

The 23 wholesale customers listed on Attachment C have individual Supply Guarantees that total approximately 161.9 MGD.

If the amount of water purchased from SFPUC by Hayward exceeds 22.1 MGD for three consecutive fiscal years, the individual Supply Guarantees of each of those 23 wholesale customers will be reduced as described below.

STEP ONE:

Obtain the average annual excess purchases during the three fiscal year period. For example, assume Hayward uses 25.0 MGD, 24.2 MGD and 26.0 MGD in three consecutive years. The average annual excess use for that period is 2.9 MGD; calculated as follows:

$$\frac{[25.0 \text{ MGD} + 24.2 \text{ MGD} + 26.0 \text{ MGD}]}{3} + 161.9 \text{ MGD} = 186.9 \text{ MGD}$$

$$186.9 \text{ MGD} - 184.0 \text{ MGD} = 2.9 \text{ MGD}$$

STEP TWO:

Allocate the excess purchases among the 23 Wholesale Customers in proportion to each customer's Supply Guarantee as a percentage of the total Supply Guarantees (161.9 MGD as of FY 2009-10).

For example, assume that Wholesale Customer A's Supply Guarantee is 12.0 MGD. Wholesale Customer A's percentage share of the total individual supply guarantees is 0.074, calculated as follows:

$$\frac{12.0 \text{ MGD}}{161.9 \text{ MGD}} = 0.074$$

and its share of the excess use is 0.22 MGD, calculated as follows:

$$2.9 \text{ MGD} \times 0.074 = 0.22 \text{ MGD}$$

STEP THREE:

Determine Wholesale Customer's adjusted Supply Guarantee by subtracting the result of Step Two from the Wholesale Customer's Supply Guarantee:

12 MGD - 0.22 MGD = 11.78 MGD

* * * * * * * * * *

Adjustments will be made at intervals comprised of distinct three-year periods of use by Hayward in excess of 22.1 MGD rather than overlapping periods. For example, assuming that the first adjustment were to occur in FY 2014-15 (based on use during FY 2011-12, FY 2012-13 and FY 2013-14), a second adjustment will not occur earlier than three full fiscal years thereafter (i.e., FY 2017-18, based on use by Hayward in FY 2014-15, FY 2015-16 and FY 2016-17). The figures used in the second and subsequent adjustments will reflect previous adjustments. For example, a second adjustment will use 158.9 MGD as the total of individual Supply Guarantees (161.6 MGD - 2.7 MGD = 158.9 MGD).

For purposes of simplicity, the volumetric units used in the foregoing example are MGD. For actual adjustment calculations, the unit employed will be hundreds of cubic feet ("ccf"), the unit by which the SFPUC measures water deliveries for billing purposes.

The procedure described and illustrated above is independent of and unrelated to the establishment by the SFPUC of Interim Supply Limitations described in Article 4.

ATTACHMENT E

MINIMUM ANNUAL PURCHASE QUANTITIES

(Section 3.07.C)

AGENCY	MINIMUM ANNUAL PURCHASE QUANTITY (IN MGD)
Alameda County Water District	7.648
City of Milpitas	5.341
City of Mountain View	8.930
City of Sunnyvale	8.930

Water Dept.
FILE COPY

DUPLICATE CITY CLERK FILE COPY
City of Santa Clara

WATER SALES CONTRACT

This Contract, dated as of July 1, 2009, is entered into by and between the City and County of San Francisco ("San Francisco") and the City of Santa Clara ("Customer").

RECITALS

San Francisco and the Customer have entered into a Water Supply Agreement ("WSA"), which sets forth the terms and conditions under which San Francisco will continue to furnish water for domestic and other municipal purposes to Customer and to other Wholesale Customers. The WSA contemplates that San Francisco and each individual Wholesale Customer will enter into an individual contract describing the location or locations at which water will be delivered to each customer by the San Francisco Public Utilities Commission ("SFPUC"), the customer's service area within which water so delivered is to be sold, and other provisions unique to the individual purchaser. This Water Sales Contract is the individual contract contemplated by the WSA.

AGREEMENTS OF THE PARTIES

1. Incorporation of the WSA

The terms and conditions of the WSA are incorporated into this Contract as if set forth in full herein.

2. Term

Unless explicitly provided to the contrary in Article 9 of the WSA, the term of this Contract shall be identical to that provided in Section 2.01 of the WSA.

3. Service Area

Water delivered by San Francisco to the Customer may be used or sold within the service area shown on the map designated Exhibit A attached hereto. Customer shall not deliver or sell any water provided by San Francisco outside of this area.

4. Location and Description of Service Connections

Sale and delivery of water to Customer will be made through a connection or connections to the SFPUC Regional Water System at the location or locations listed, with the applicable present account number, service location, service size, and meter size shown on Exhibit B attached hereto.

5. Interties With Other Systems

Customer maintains interties with neighboring water systems at the location or locations and with the connection size(s) as shown on Exhibit C attached hereto.

6. Billing and Payment

San Francisco shall compute the amounts of water delivered and bill Customer therefor on a monthly basis. The bill shall show the separate components of the charge (e.g., service, consumption, demand). Customer shall pay the amount due within thirty (30) days after receipt of the bill.

If Customer disputes the accuracy of any portion of the water bill it shall (a) notify the General Manager of the SFPUC in writing of the specific nature of the dispute and (b) pay the undisputed portion of the bill within thirty (30) days after receipt. Customer shall meet with the General Manager of the SFPUC or a delegate to discuss the disputed portion of the bill.

7. Temporary Water Supply

Service to Customer under this Contract is temporary only and water is delivered subject to the provisions of Sections 4.05 and 9.06 of the WSA. The combined annual average water usage of Customer and the City of San Jose shall not exceed 9 MGD. Customer's individual share of the 9 MGD temporary supply allocated to Customer and the City of San Jose is 4.5 MGD. Irrespective of Customer's and San Jose's individual shares of the total 9 MGD supply increment, water purchases by either Santa Clara or San Jose may exceed 4.5 MGD on an annual average basis so long as the total used by both Cities does not exceed 9 MGD

(combined annual average). By supplying water to Customer, San Francisco does not dedicate water or a water supply to Customer nor obligate itself, contractually or otherwise, to supply water to Customer beyond the term of this Contract. Customer acknowledges that it is not presently a permanent customer of San Francisco.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, to become effective upon the effectiveness of the WSA, by their duly authorized representatives.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities Commission

By: _____
Edward Harrington
General Manager

Date: JUN 17, 2009

Approved by Commission Resolution No. 09-0069, adopted April 28, 2009

_____
Michael Housh
Secretary to Commission

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Joshua D. Milstein
Deputy City Attorney

CITY OF SANTA CLARA

By: _____
Jennifer Sparacino
City Manager

Date: June 30, 2009

Attest: Approved by City Council Resolution No. 09-7640, adopted on June 9, 2009

_____
Rod Diridon Jr.
City Clerk

Approved as to form:

By: _____
Helene L. Leichter
City Attorney

Exhibit A

Service Area Map

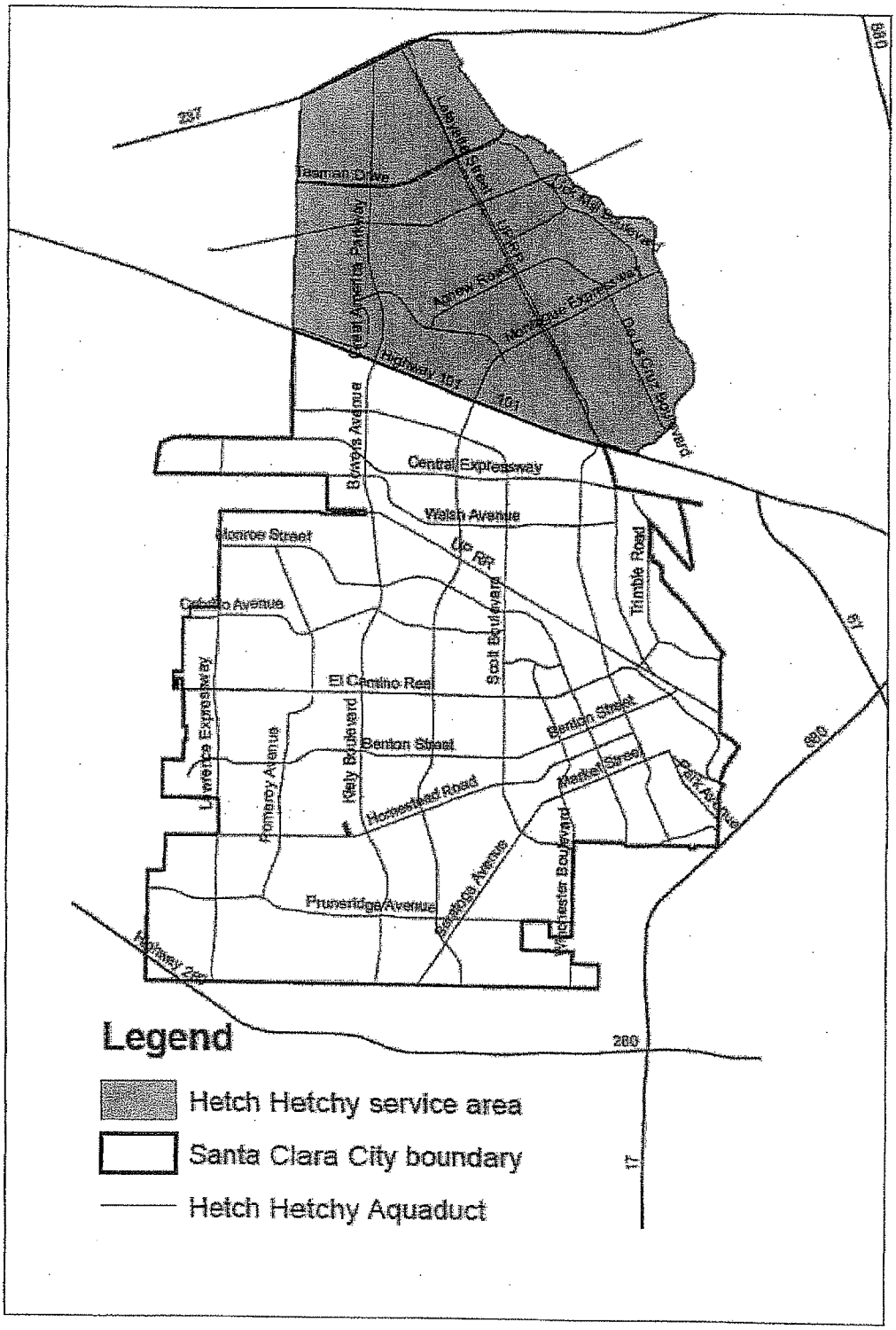


Exhibit B

Location and Description of Service Connections to the SFPUC Regional Water System

Account	Meter Connection	Service Address	Service Street	Service Street Suffix	Service City	Service Size	Meter Size
010002012	1	4790	GREAT AMERICAN PARK	WY	Santa Clara	12	10
010002012	1	2700	TASMAN	DR	Santa Clara	16	10

Exhibit C

Emergency Connections with Other Water Systems (within Hetch-Hetchy Service Area)

Connection With	Number	Size
San Jose Municipal Water System	1	8"

ATTACHMENT G

WATER QUALITY NOTIFICATION AND COMMUNICATIONS PLAN
REVISION 4- JANUARY 2009

SFPUC
WATER
WASTEWATER
POWER

Updated by:
Water Quality Engineering
Olivia Chen Consultants, Inc.

San Francisco Public
Utilities Commission Water
Quality Bureau

Water Quality Notification
and Communications Plan
Revision 4 - January 2008

1914841.1

ATTACHMENT H

WATER SHORTAGE ALLOCATION PLAN

This Interim Water Shortage Allocation Plan ("Plan") describes the method for allocating water between the San Francisco Public Utilities Commission ("SFPUC") and the Wholesale Customers collectively during shortages caused by drought. The Plan implements a method for allocating water among the individual Wholesale Customers which has been adopted by the Wholesale Customers. The Plan includes provisions for transfers, banking, and excess use charges. The Plan applies only when the SFPUC determines that a system-wide water shortage due to drought exists, and all references to "shortages" and "water shortages" are to be so understood. This Plan was adopted pursuant to Section 7.03(a) of the 1984 Settlement Agreement and Master Water Sales Contract and has been updated to correspond to the terminology used in the June 2009 Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County ("Agreement").

SECTION 1. SHORTAGE CONDITIONS

1.1. Projected Available SFPUC Water Supply. The SFPUC shall make an annual determination as to whether or not a shortage condition exists. The determination of projected available water supply shall consider, among other things, stored water, projected runoff, water acquired by the SFPUC from non-SFPUC sources, inactive storage, reservoir losses, allowance for carryover storage, and water bank balances, if any, described in Section 3.

1.2 Projected SFPUC Purchases. The SFPUC will utilize purchase data, including volumes of water purchased by the Wholesale Customers and by Retail Customers (as those terms are used in the Agreement) in the year immediately prior to the drought, along with other available relevant information, as a basis for determining projected system-wide water purchases from the SFPUC for the upcoming year.

1.3. Shortage Conditions. The SFPUC will compare the available water supply (Section 1.1) with projected system-wide water purchases (Section 1.2). A shortage condition exists if the SFPUC determines that the projected available water supply is less than projected system-wide water purchases in the upcoming Supply Year (defined as the period from July 1 through June 30). When a shortage condition exists, SFPUC will determine whether voluntary or mandatory actions will be required to reduce purchases of SFPUC water to required levels.

1.3.1 Voluntary Response. If the SFPUC determines that voluntary actions will be sufficient to accomplish the necessary reduction in water use throughout its service area, the SFPUC and the Wholesale Customers will make good faith efforts to reduce their water purchases to stay within their annual shortage allocations and associated monthly water use budgets. The SFPUC will not impose excess use charges during periods of voluntary rationing, but may suspend the prospective accumulation of water bank credits, or impose a ceiling on further accumulation of bank credits, consistent with Section 3.2.1 of this Plan.

1.3.2 Mandatory Response. If the SFPUC determines that mandatory actions will be required to accomplish the necessary reduction in water use in the SFPUC service area, the SFPUC may implement excess use charges as set forth in Section 4 of this Plan.

1.4. Period of Shortage. A shortage period commences when the SFPUC determines that a water shortage exists, as set forth in a declaration of water shortage emergency issued by the SFPUC pursuant to California Water Code Sections 350 et seq. Termination of the water shortage emergency will be declared by resolution of the SFPUC.

SECTION 2. SHORTAGE ALLOCATIONS

2.1. Annual Allocations between the SFPUC and the Wholesale Customers. The annual water supply available during shortages will be allocated between the SFPUC and the collective Wholesale Customers as follows:

Level of System Wide Reduction in Water Use Required	Share of Available Water	
	SFPUC Share	Wholesale Customers Share
5% or less	35.5%	64.5%
6% through 10%	36.0%	64.0%
11% through 15%	37.0%	63.0%
16% through 20%	37.5%	62.5%

The water allocated to the SFPUC shall correspond to the total allocation for all Retail Customers.

2.2 Annual Allocations among the Wholesale Customers. The annual water supply allocated to the Wholesale Customers collectively during system wide shortages of 20 percent or less will be apportioned among them based on a methodology adopted by all of the Wholesale Customers, as described in Section 3.11(C) of the Agreement. In any year for which the methodology must be applied, the Bay Area Water Supply and Conservation Agency ("BAWSCA") will calculate each Wholesale Customer's individual percentage share of the amount of water allocated to the Wholesale Customers collectively pursuant to Section 2.1. Following the declaration or reconfirmation of a water shortage emergency by the SFPUC, BAWSCA will deliver to the SFPUC General Manager a list, signed by the President of BAWSCA's Board of Directors and its General Manager, showing each Wholesale Customer together with its percentage share and stating that the list has been prepared in accordance with the methodology adopted by the Wholesale Customers. The SFPUC shall allocate water to each Wholesale Customer, as specified in the list. The shortage allocations so established may be transferred as provided in Section 2.5 of this Plan. If BAWSCA or all Wholesale Customers do not provide the SFPUC with individual allocations, the SFPUC may make a final allocation decision after first meeting and discussing allocations with BAWSCA and the Wholesale Customers.

The methodology adopted by the Wholesale Customers utilizes the rolling average of each individual Wholesale Customer's purchases from the SFPUC during the three immediately

preceding Supply Years. The SFPUC agrees to provide BAWSCA by November 1 of each year a list showing the amount of water purchased by each Wholesale Customer during the immediately preceding Supply Year. The list will be prepared using Customer Service Bureau report MGT440 (or comparable official record in use at the time), adjusted as required for any reporting errors or omissions, and will be transmitted by the SFPUC General Manager or his designee.

2.3. Limited Applicability of Plan to System Wide Shortages Greater Than Twenty Percent. The allocations of water between the SFPUC and the Wholesale Customers collectively, provided for in Section 2.1, apply only to shortages of 20 percent or less. The SFPUC and Wholesale Customers recognize the possibility of a drought occurring which could create system-wide shortages greater than 20 percent despite actions taken by the SFPUC aimed at reducing the probability and severity of water shortages in the SFPUC service area. If the SFPUC determines that a system wide water shortage greater than 20 percent exists, the SFPUC and the Wholesale Customers agree to meet within 10 days and discuss whether a change is required to the allocation set forth in Section 2.1 in order to mitigate undue hardships that might otherwise be experienced by individual Wholesale Customers or Retail Customers. Following these discussions, the Tier 1 water allocations set forth in Section 2.1 of this Plan, or a modified version thereof, may be adopted by mutual written consent of the SFPUC and the Wholesale Customers. If the SFPUC and Wholesale Customers meet and cannot agree on an appropriate Tier 1 allocation within 30 days of the SFPUC's determination of water shortage greater than 20 percent, then (1) the provisions of Section 3.11(C) of the Agreement will apply, unless (2) all of the Wholesale Customers direct in writing that a Tier 2 allocation methodology agreed to by them be used to apportion the water to be made available to the Wholesale Customers collectively, in lieu of the provisions of Section 3.11(C).

The provisions of this Plan relating to transfers (in Section 2.5), banking (in Section 3), and excess use charges (in Section 4) shall continue to apply during system-wide shortages greater than 20 percent.

2.4. Monthly Water Budgets. Within 10 days after adopting a declaration of water shortage emergency, the SFPUC will determine the amount of Tier 1 water allocated to the Wholesale Customers collectively pursuant to Section 2.1. The SFPUC General Manager, using the Tier 2 allocation percentages shown on the list delivered by BAWSCA pursuant to Section 2.2, will calculate each Wholesale Customer's individual annual allocation. The SFPUC General Manager, or his designee, will then provide each Wholesale Customer with a proposed schedule of monthly water budgets based on the pattern of monthly water purchases during the Supply Year immediately preceding the declaration of shortage (the "Default Schedule"). Each Wholesale Customer may, within two weeks of receiving its Default Schedule, provide the SFPUC with an alternative monthly water budget that reschedules its annual Tier 2 shortage allocation over the course of the succeeding Supply Year. If a Wholesale Customer does not deliver an alternative monthly water budget to the SFPUC within two weeks of its receipt of the Default Schedule, then its monthly budget for the ensuing Supply Year shall be the Default Schedule proposed by the SFPUC.

Monthly Wholesale Customer water budgets will be derived from annual Tier 2 allocations for purposes of accounting for excess use. Monthly Wholesale Customer water budgets shall be adjusted during the year to account for transfers of shortage allocation under Section 2.5 and

transfers of banked water under Section 3.4.

2.5. Transfers of Shortage Allocations. Voluntary transfers of shortage allocations between the SFPUC and any Wholesale Customers, and between any Wholesale Customers, will be permitted using the same procedure as that for transfers of banked water set forth in Section 3.4. The SFPUC and BAWSCA shall be notified of each transfer. Transfers of shortage allocations shall be deemed to be an emergency transfer and shall become effective on the third business day after notice of the transfer has been delivered to the SFPUC. Transfers of shortage allocations shall be in compliance with Section 3.05 of the Agreement. The transferring parties will meet with the SFPUC, if requested, to discuss any effect the transfer may have on its operations.

SECTION 3. SHORTAGE WATER BANKING

3.1. Water Bank Accounts. The SFPUC shall create a water bank account for itself and each Wholesale Customer during shortages in conjunction with its resale customer billing process. Bank accounts will account for amounts of water that are either saved or used in excess of the shortage allocation for each agency; the accounts are not used for tracking billings and payments. When a shortage period is in effect (as defined in Section 1.4), the following provisions for bank credits, debits, and transfers shall be in force. A statement of bank balance for each Wholesale Customer will be included with the SFPUC's monthly water bills.

3.2. Bank Account Credits. Each month, monthly purchases will be compared to the monthly budget for that month. Any unused shortage allocation by an agency will be credited to that agency's water bank account. Credits will accumulate during the entire shortage period, subject to potential restrictions imposed pursuant to Section 3.2.1. Credits remaining at the end of the shortage period will be zeroed out; no financial or other credit shall be granted for banked water.

3.2.1. Maximum Balances. The SFPUC may suspend the prospective accumulation of credits in all accounts. Alternatively, the SFPUC may impose a ceiling on further accumulation of credits in water bank balances based on a uniform ratio of the bank balance to the annual water allocation. In making a decision to suspend the prospective accumulation of water bank credits, the SFPUC shall consider the available water supply as set forth in Section 1.1 of this Plan and other reasonable, relevant factors.

3.3. Account Debits. Each month, monthly purchases will be compared to the budget for that month. Purchases in excess of monthly budgets will be debited against an agency's water bank account. Bank debits remaining at the end of the fiscal year will be subject to excess use charges (see Section 4).

3.4. Transfers of Banked Water. In addition to the transfers of shortage allocations provided for in Section 2.5, voluntary transfers of banked water will also be permitted between the SFPUC and any Wholesale Customer, and among the Wholesale Customers. The volume of transferred water will be credited to the transferee's water bank account and debited against the transferor's water bank account. The transferring parties must notify the SFPUC and BAWSCA of each transfer in writing (so that adjustments can be made to bank accounts), and will meet with the SFPUC, if requested, to discuss any affect the transfer may have on SFPUC operations. Transfers of banked water shall be deemed to be an emergency transfer and shall become effective on the third business day after notice of the transfer has been delivered to the SFPUC.

If the SFPUC incurs extraordinary costs in implementing transfers, it will give written notice to the transferring parties within ten (10) business days after receipt of notice of the transfer. Extraordinary costs means additional costs directly attributable to accommodating transfers and which are not incurred in non-drought years nor simply as a result of the shortage condition itself. Extraordinary costs shall be calculated in accordance with the procedures in the Agreement and shall be subject to the disclosure and auditing requirements in the Agreement. In the case of transfers between Wholesale Customers, such extraordinary costs shall be considered to be expenses chargeable solely to individual Wholesale Customers and shall be borne equally by the parties to the transfer. In the case of transfers between the SFPUC and a Wholesale Customer, the SFPUC's share of any extraordinary transfer costs shall not be added to the Wholesale Revenue Requirement.

3.4.1. Transfer Limitations. The agency transferring banked water will be allowed to transfer no more than the accumulated balance in its bank. Transfers of estimated prospective banked credits and the "overdrafting" of accounts shall not be permitted. The price of transfer water originally derived from the SFPUC system is to be determined by the transferring parties and is not specified herein. Transfers of banked water shall be in compliance with Section 3.05 of the Agreement.

SECTION 4. WHOLESALE EXCESS USE CHARGES

4.1. Amount of Excess Use Charges. Monthly excess use charges shall be determined by the SFPUC at the time of the declared water shortage consistent with the calendar in Section 6 and in accordance with Section 6.03 of the Agreement. The excess use charges will be in the form of multipliers applied to the rate in effect at the time the excess use occurs. The same excess use charge multipliers shall apply to the Wholesale Customers and all Retail Customers. The excess use charge multipliers apply only to the charges for water delivered at the rate in effect at the time the excess use occurred.

4.2 Monitoring Suburban Water Use. During periods of voluntary rationing, water usage greater than a customer's allocation (as determined in Section 2) will be indicated on each SFPUC monthly water bill. During periods of mandatory rationing, monthly and cumulative water usage greater than a Wholesale Customer's shortage allocation and the associated excess use charges will be indicated on each SFPUC monthly water bill.

4.3. Suburban Excess Use Charge Payments. An annual reconciliation will be made of monthly excess use charges according to the calendar in Section 6. Annual excess use charges will be calculated by comparing total annual purchases for each Wholesale Customer with its annual shortage allocation (as adjusted for transfers of shortage allocations and banked water, if any). Excess use charge payments by those Wholesale Customers with net excess use will be paid according to the calendar in Section 6. The SFPUC may dedicate excess use charges paid by Wholesale Customers toward the purchase of water from the State Drought Water Bank or other willing sellers in order to provide additional water to the Wholesale Customers. Excess use charges paid by the Wholesale Customers constitute Wholesale Customer revenue and shall be included within the SFPUC's annual Wholesale Revenue Requirement calculation.

SECTION 5. GENERAL PROVISIONS GOVERNING WATER SHORTAGE ALLOCATION PLAN

5.1. Construction of Terms. This Plan is for the sole benefit of the parties and shall not be construed as granting rights to any person other than the parties or imposing obligations on a party to any person other than another party.

5.2. Governing Law. This Plan is made under and shall be governed by the laws of the State of California.

5.3. Effect on Agreement. This Plan describes the method for allocating water between the SFPUC and the collective Wholesale Customers during system-wide water shortages of 20 percent or less. This Plan also provides for the SFPUC to allocate water among the Wholesale Customers in accordance with directions provided by the Wholesale Customers through BAWSCA under Section 2.2, and to implement a program by which such allocations may be voluntarily transferred among the Wholesale Customers. The provisions of this Plan are intended to implement Section 3.11(C) of the Agreement and do not affect, change or modify any other section, term or condition of the Agreement.

5.4. Inapplicability of Plan to Allocation of SFPUC System Water During Non-Shortage Periods. The SFPUC's agreement in this Plan to a respective share of SFPUC system water during years of shortage shall not be construed to provide a basis for the allocation of water between the SFPUC and the Wholesale Customers when no water shortage emergency exists.

5.5. Termination. This Plan shall expire at the end of the Term of the Agreement.. The SFPUC and the Wholesale Customers can mutually agree to revise or terminate this Plan prior to that date due to changes in the water delivery capability of the SFPUC system, the acquisition of new water supplies, and other factors affecting the availability of water from the SFPUC system during times of shortage.

SECTION 6. ALLOCATION CALENDAR

6.1. Annual Schedule. The annual schedule for the shortage allocation process is shown below. This schedule may be changed by the SFPUC to facilitate implementation.

6.1.1

In All Years	Target Dates
1. SFPUC delivers list of annual purchases by each Wholesale Customer during the immediately preceding Supply Year	November 1
2. SFPUC meets with the Wholesale Customers and presents water supply forecast for the following Supply Year	February
3. SFPUC issues initial estimate of available water supply	February 1
4. SFPUC announces potential first year of drought (if applicable)	February 1
5. SFPUC and Wholesale Customers meet upon request to exchange information concerning water availability and projected system-wide purchases	February 1-May 31
6. SFPUC issues revised estimate of available water supply, and confirms continued potential shortage conditions, if applicable	March 1
7. SFPUC issues final estimate of available water supply	April 15th or sooner if adequate snow course measurement data is available to form a robust estimate on available water supply for the coming year.
8. SFPUC determines amount of water available to Wholesale Customers collectively	April 15th or sooner if adequate snow course measurement data is available to form a robust estimate on available water supply for the coming year.

In Drought Years	Target Dates
9. SFPUC formally declares the existence of water shortage emergency (or end of water shortage emergency, if applicable) under Water Code Sections 350 et. seq.	April 15-31
10. SFPUC declares the need for a voluntary or mandatory response	April 15-31
11. BAWSCA submits calculation to SFPUC of individual Wholesale Customers' percentage shares of water allocated to Wholesale Customers collectively	April 15-31
12. SFPUC determines individual shortage allocations, based on BAWSCA's submittal of individual agency percentage shares to SFPUC, and monthly water budgets (Default Schedule)	April 25—May 10
13. Wholesale Customers submit alternative monthly water budgets (optional)	May 8-May 24
14. Final drought shortage allocations are issued for the Supply Year beginning July 1 through June 30	June 1
15. Monthly water budgets become effective	July 1
16. Excess use charges indicated on monthly Suburban bills	August 1 (of the beginning year) through June 30 (of the succeeding year)
17. Excess use charges paid by Wholesale Customers for prior year	August of the succeeding year

ATTACHMENT I

NOT USED

ATTACHMENT J

DEFINITIONS AND FORMULAS FOR CALCULATING PROPORTIONAL ANNUAL WATER USE

TABLE OF CONTENTS

This Attachment contains four sections, three figures, and five tables.

Section A:	Water Meters
Section B:	Calculation of Proportional Annual Water Use
Section C:	Data Requirements and Schedule
Section D:	County Line and In-City Terminal Reservoir Meter Calibration and Maintenance
Figure 1:	Locations of SFPUC County-Line Meters and In-City Terminal Reservoirs
Figure 2:	Generalized Schematic of Lake Merced Pump Station
Figure 3:	Locations of System Input and In-Line Meters
Table 1:	Base Usage and Allocation Rates
Table 2:	Locations of SFPUC County-line Meters and In-City Terminal Reservoirs
Table 3:	Locations of SFPUC System Input and In-line Meters
Table 4:	County-line Meters, In-City Terminal Reservoirs and Associated Metering Equipment
Table 5:	Meter Calibration and Maintenance Frequency

Table 1 presents the format for the water usage and allocation rate calculations for reference and to illustrate the definitions and formulas described in Sections A through C. Tables 2 and 3 list the meters whose locations are shown on Figures 1 and 3, respectively. Table

4 identifies the type of meter and associated metering equipment for the County-line Meters and Terminal Reservoirs. Table 5 identifies the meter calibration and maintenance frequency for the meters and equipment listed in Table 4.

SECTION A. WATER METERS

1. General

The Agreement provides that certain operating and maintenance expenses and the capital cost of certain categories of utility plant in service are to be allocated between San Francisco and the Wholesale Customers on the basis of proportionate annual usage of the Regional Water System. The purpose of this Attachment is to describe the meters and illustrate the method by which proportionate annual usage will be calculated.

2. Units of Measurement, Rounding, Conversion

The SFPUC will compile the usage data required to complete Table 1 annually. The units of measurement and conventions for converting and rounding will be as follows.

The data in the Table 1 will be presented, and the calculations contemplated by this Attachment shown, in units of millions of gallons per day (mgd), rounded to the nearest tenth of an mgd. Percentages (e.g., the City and Wholesale usage rates) shall be carried to two digits to the right of the decimal point and reduction factors shall be carried to four digits to the right of the decimal point. Data compiled by the SFPUC in units of hundreds of cubic feet per year (ccf) shall be converted to mgd by multiplying hundreds of cubic feet per year by 0.0000020493 (or 2.0493×10^{-6}) for non-leap years and 0.0000020437 (or 2.0437×10^{-6}) for leap years.

In rounding, if the rightmost digit dropped is 0 through 4, the preceding digit shall be left unchanged; if the rightmost digit dropped is 5 through 9, the preceding digit shall be increased by 1.

3. Location of Meters/Gauges

The SFPUC presently maintains meters and gauges that have been used to determine the proportionate usage of the Regional Water System, in accordance with the methods and calculations described in Exhibit J to the 1984 contract between San Francisco and the Wholesale Customers. These meters consist of "County-Line Meters," "In-City Terminal Reservoir Meters" and "System Input and In-line Meters" as described in the following subsections. As new capital improvement projects are designed and constructed by the SFPUC, it may be necessary for new meters to be installed to ensure continued accurate determinations of the proportionate usage of the Regional Water System. "Planned meters" are included in the following subsections where planned capital improvement projects are likely to require the installation of additional meters.

a. County-line Meters

The SFPUC presently maintains meters at or near the San Mateo-San Francisco County line to measure flow through all transmission pipelines entering the City ("County-line Meters"). The existing and planned County-line Meters are listed in Table 2 and shown on Figures 1 and 2. Additional details pertaining to the County-line meters located at the Lake Merced Pump Station, and specifically to water deliveries from the pump station to Sunset Reservoir, Sutro Reservoir, and Lake Merced are provided below.

(1) County-Line deliveries to Sunset and Sutro Reservoirs

Water delivered to the City through the Sunset Supply Pipeline may be pumped from the Lake Merced Pump Station to either Sunset Reservoir or Sutro Reservoir located within the City. When water is pumped from the Lake Merced Pump Station to both Sunset and Sutro reservoirs simultaneously, the recording instrumentation on the Sunset and Sutro venturi meters are designed to record flows through both meters. When water is pumped to Sutro Reservoir only (typically utilizing Pump No. 4 at the

Lake Merced Pump Station), the source water is from the Sunset Reservoir (not the County-line), and the direction of flow through the Sunset venturi meter is reversed. Under this pumping scenario, the recording instrumentation on the Sunset and Sutro venturi meters are designed to not record flow on their respective recorders such that the in-City transfer of water between Sunset and Sutro Reservoirs is not included as a County-line delivery to the City. Figure 2 provides a generalized schematic of the Lake Merced Pump Station and the typical direction of flow from the County-line, through the pump station.

(2) County-line deliveries to Lake Merced

In order to raise and maintain water levels in Lake Merced, the SFPUC occasionally delivers water directly from the Regional Water System to Lake Merced. Deliveries from the Regional Water System to Lake Merced are accomplished at the Lake Merced Pump Station. The procedure involves operating valves on the suction side of Sunset Pump No. 2 such that water may flow by gravity in the Sunset Supply Pipeline, from San Mateo County, across the County-line and into San Francisco, through Lake Merced Pump Station and into the Lake Merced wet well. A 16-inch pipeline connection on the suction side of Sunset Pump No. 2 allows for deliveries of water to the wet well (see Figure 2). Water deliveries from the Regional Water System to Lake Merced are considered County-line deliveries and an in-City usage in the calculation of water allocation rates.

b. In-City Terminal Reservoirs

Water usage by the City includes water deliveries from the SFPUC's "terminal reservoirs." The terminal reservoirs are: 1) Sunset Reservoir, 2) University Mound Reservoir, and 3) Merced Manor Reservoir. The terminal reservoirs are shown on Figure 1.

c. System Input and In-Line Meters

The SFPUC presently measures water flow into and through the Regional System utilizing "System Input and In-Line Meters." The existing and planned System Input and In-Line Meters are listed in Table 3 and shown on Figure 3.

d. Wholesale Customer Meters and City Retail Customer Meters Located Outside the Boundaries of the City

The SFPUC presently measures water deliveries from the Regional Water System to its Wholesale Customers at various locations where the water delivery systems of the individual Wholesale Customers tie into the Regional Water System. The meters at these locations are referred to as the Wholesale Customers' "master meters." The SFPUC also measures water deliveries from the Regional Water System to other customers located outside of the boundaries of the City that are not Wholesale Customers. Water deliveries to the Wholesale Customers and Retail Customers outside the City's boundaries that receive water from the Regional Water System are accounted for by the SFPUC's Customer Service Division as described in Section B.

4. Replacement and Relocation of Meters, Gauges, and Recording Devices.

The SFPUC presently equips all of its large venturi meters with differential pressure transmitters. The smaller meters utilize other methods and equipment to register and record flows. The SFPUC will maintain the meters, gauges, and recording devices described above in subsections (a), (b), (c), and (d) unless and until such meters, gauges, and recording devices are replaced.

The SFPUC may replace the meters, gauges, and recording devices described above in subsections (a), (b), (c), and (d) or install new meters, gauges, and recording devices at new locations, provided that such changes do not diminish the accuracy of the water flow measurements or impair the ability of the SFPUC to separate direct City water use from water use by the wholesale customers. Maintenance and calibration procedures for new or replaced equipment may change. Modified maintenance and calibration procedures for new or replaced equipment will conform to industry standards set forth in AWWA Manual M33, the applicable

standards in the International Society of Automation, and will implement the manufacturer's instructions for maintenance and calibration. The SFPUC will provide BAWSCA with advance written notice of any such changes, together with a brief explanation of the reasons therefor and a description of the type and location of the replacement. Such notice shall automatically amend the list of meters, gauges, and recording devices set forth above in subsections (a), (b), (c), and (d).

5. Recording of Water Flow Data

a. Flow Data

The City shall record and maintain data measuring base water flow throughout the SFPUC Regional Water System as necessary to determine proportional annual water usage.

b. Reservoir Data

The SFPUC shall record and maintain data measuring the levels of the terminal reservoirs described above in subsection A.3.b and shown on Figure 1 on an hourly basis. Flow values derived from reservoir level readings for all reservoirs in the SFPUC wholesale system shall be calculated using the tables contained in the SFPUC publication "Reservoir Data" (aka "The Weir Book"), which set forth the relationship between reservoir levels and water volumes, as such tables may be amended from time to time to reflect changes in the volumes of the various reservoirs. The tables to be used initially shall be those from the current edition of The Weir Book.

SECTION B. CALCULATION OF PROPORTIONAL ANNUAL USAGE

"Base rates" means the percentages of annual SFPUC deliveries attributed to the Wholesale Customers and to City Retail Customers.

The percentage of annual SFPUC metered deliveries attributed to the Wholesale Customers (i.e., the wholesale base rate) shall be calculated for each fiscal year as described below and illustrated in Table 1. The item numbers listed below correspond to the item numbers listed in Table 1.

(1) "Gross San Francisco County line base deliveries" shall equal the total amount of water flowing into the City's distribution system through transmission pipelines entering the City, as measured by the County-Line Meters described in Section A.3.a. and shown on Figures 1 and 2.

(2) "Daly City base deliveries" shall equal the water flowing to Daly City through meter accounts provided downstream of the County-Line meters or through SFPUC's City Distribution Division. At present these accounts are:

(a) CSPLI/Macdonald Avenue Service (Account number 010084-01-0)

(b) Guttenberg Street Service (Account number 010013-01-3)

(c) Carter Street Service (Account numbers 284070-01-8 and 284071-01-6)

These accounts represent a portion of the total deliveries to Daly City. The quantities of water delivered to these four Daly City accounts are reported monthly in Form MGT441 by the SFPUC's Customer Service Division. These connections to meters are presently located within the City, and thus record water which has already been recorded by the SFPUC's master meters at the County line. So long as this condition continues, Daly City base deliveries shall be subtracted from "Gross San Francisco County line base deliveries."

(3) "Net San Francisco base deliveries" shall equal the result of subtracting "Daly City base deliveries" from "Gross San Francisco County line base deliveries."

(4) "Other suburban raw water base deliveries" shall equal the sum of all deliveries of raw (untreated) water to customers of the SFPUC located outside the City other than deliveries to the Wholesale Customers. "Other suburban raw water base deliveries" include deliveries of raw water in Alameda and San Mateo Counties to SFPUC Retail Customers, City departments and commissions, and other users affiliated with San Francisco.

(5) "Other suburban treated water base deliveries" shall equal the sum of all deliveries of treated water to customers of the SFPUC located outside the City other than deliveries to the Wholesale Customers. Other suburban treated water base deliveries include deliveries of treated water to the SFPUC's Retail Customers in San Mateo, Santa Clara and Alameda Counties (such as NASA Ames Research Center and LLNL), to City departments and commissions and other users affiliated with San Francisco (such as the San Francisco International Airport, the San Francisco County Jail, and tenants of land owned by the City Recreation and Park Department).

(6) "Other suburban base deliveries" shall equal the sum of "Other suburban raw water deliveries" and "Other suburban treated water deliveries." The combined amount of raw and treated water delivered to suburban entities other than the Wholesale Customers is reported monthly in Form MGT440 by the SFPUC's Customer Service Division.

(7) "Total City base usage" shall equal "Net San Francisco base deliveries" plus "Other suburban base deliveries."

(8) "Total wholesale base usage" shall equal the sum of all metered deliveries to the Wholesale Customers measured at their SFPUC master meters (including all deliveries to Daly City which are comprised of deliveries through meters located outside San Francisco and meters located inside San Francisco, deliveries through the latter of which are designated above in paragraph B.1.2 as "Daly City base

deliveries"). The quantity of water delivered to the individual Wholesale Customers, and the combined amount of water delivered to all Wholesale Customers is reported monthly in Form MGT440 by the SFPUC's Customer Service Division.

(9) "Total system base usage" shall equal "City base usage" plus "Wholesale base usage."

(10) "Wholesale base rate" shall equal the percentage obtained by dividing "Wholesale base usage" by "Total system base usage."

(11) "City base rate" shall equal the percentage obtained by subtracting "Wholesale base rate" from 100 percent.

(12) "Base system input" shall equal all amounts of water supplied to the SFPUC Regional Water System, which presently comes from the following sources:

(a) Hetch Hetchy water as measured at the venturi meters on the 58-inch, 61-inch, and 78.5-inch San Joaquin Pipeline Nos. 1, 2, and 3 near Oakdale.

(b) Water supplied by HHWPD to LLNL as measured at the customer meter. Water delivered from the system to LLNL shall be deemed negative in sign for the purpose of determining "Base system input."

(c) Hetch Hetchy water pumped from the Alameda siphons to San Antonio Reservoir as measured at the venturi meter on the 60-inch San Antonio pipeline. Water delivered from the system to San Antonio Reservoir shall be deemed negative in sign for the purpose of determining "Base system input."

(d) Sunol Valley Water Treatment Plant as measured at the meter on the 78-inch effluent pipeline.

(e) Harry Tracy Water Treatment Plant as measured at the venturi meters on the 60-inch and 78-inch effluent pipelines.

(f) Raw water deliveries to all SFPUC Retail Customers outside the City boundaries as measured at the customer meter. These deliveries are considered positive for the purposes of Table 1. Currently, raw water deliveries to the system are represented by the following account numbers contained in Form MGT440 prepared by the SFPUC's Customer Service Division:

266081-01-7 (Calaveras Nursery)
266081-02-5 (Calaveras Nursery)
264355-01-7 (Caltrans)
266084-02-9 (Color Spot Nursery)
272701-02-0 (Color Spot Nursery)
266069-02-0 (Crystal Springs Golf Course)
266078-02-1 (Dell Franklin)
266078-01-3 (Dells Nursery)
266084-01-1 (Hi-C Nursery)
272701-01-2 (Hi-C Nursery)
284112-01-8 (Hansen Aggregates)
266084-03-7 (Jeff Anhorn Nursery)
272701-03-8 (Jeff Anhorn Nursery)
266079-02-9 (Mission Valley Rock)
281043-01-8 (Mission Valley Rock)
267618-02-3 (Nagata Farms)
267618-01-5 (Nagata Farms)
266090-01-8 (Naka Nursery)

266091-01-6 (Naka Nursery)
266090-02-6 (Naka Nursery)
266091-02-4 (Naka Nursery)
264315-02-9 (Pacific Nurseries)
266076-01-7 (Sunol Christmas Tree Farm)
266076-02-5 (Sunol Tree Farm)
276095-01-5 (Sunol Valley Golf & Recreation)
266077-02-3 (Ura Farm)
264352-01-4 (Ura, John)
266075-01-9 (Valley Crest)
268276-01-1 (Valley Crest Nursery)
266093-01-2 (Valley Crest Tree Company)
268426-02-0 (Valley Crest Tree Company)
266075-02-7 (Valley Crest Tree Company)
266093-02-0 (Valley Crest Tree Company)
268276-02-9 (Valley Crest Tree Company)
266082-01-5 (Western Star Nursery)
266089-01-0 (Western Star Nursery)
267254-02-7 (Western Star Nursery)
266082-02-3 (Western Star)
266089-02-8 (Western Star)
267254-03-5 (Western Star)

(g) Raw water deliveries from Pilarcitos Reservoir and Crystal Springs Reservoir to Coastside County Water District as measured at the customer meters. These deliveries are considered positive for the purposes of Table 1. Currently, raw water deliveries to Coastside County Water District from both reservoirs are represented under account number 010027-01-9 contained in Form MGT441 prepared by the SFPUC's Customer Service Division:

(h) Crystal Springs Balancing Reservoir. The flow into or out of the Crystal Springs Balancing Reservoir shall be calculated based on the changes in the amounts of water stored in the reservoir. The amounts of water stored shall be determined by the use of water level sensors, and the application of water level readings to a water level-storage capacity table. Decreases in storage, which indicate a flow from the Balancing Reservoir into the system, shall be deemed positive in sign. Increases in storage, which indicate a flow into the Balancing Reservoir from the system, shall be deemed negative in sign. Over the period of a year, the total flows into and out of Crystal Springs Balancing Reservoir are nearly equivalent. As such, total system input from Crystal Springs Reservoir shall be deemed zero for calculating current base rates.

(i) Deliveries to Crystal Springs Reservoir as measured by the overflow weir at the Pulgas Pump Station. Deliveries from the system to Crystal Springs Reservoir ("spills") shall be deemed negative in sign for the purpose of determining "Base system input."

(j) Terminal Reservoirs. The "terminal reservoirs" consist of Sunset Reservoir, University Mound Reservoir, and Merced Manor Reservoir, each located within the City of San Francisco. The flow into or out of the terminal reservoirs shall be calculated based on the changes in the amounts of water stored in them. The amounts of water stored shall be determined by the use of water level sensors, and the application of water levels to water level-storage capacity tables. Over the period of a year, the total flows into and out of terminal reservoirs are nearly equivalent. As such, total system input from the terminal reservoirs shall be deemed zero for calculating base rates.

(k) Other Sources. Other sources of flow into, or from, the Regional Water System, shall be accounted for as "other sources." Examples of other

sources of system input would include intertie water deliveries between the Regional System and the Santa Clara Valley Water District, and between the Regional System and the East Bay Municipal Utilities District, and deliveries of raw water from Crystal Springs Reservoir in the event of an emergency. Flows from the system shall be deemed negative in sign for the purpose of determining "Base system input."

(13) "Total base system input" shall equal the sum of the system inputs from the sources described in paragraph B.1.12.

(14) "Joint system loss reduction factor" shall equal "Total system base usage" divided by "Total base system input." "Joint system loss reduction factor" shall not exceed 1.0.

(15) "Daly City reduction factor" shall equal "Net San Francisco base deliveries" divided by "Gross San Francisco County line base deliveries." "Daly City reduction factor" shall not exceed 1.0.

(16) "Total suburban base deliveries" shall equal "Other suburban base deliveries" plus "Total wholesale base usage."

(17) "Suburban reduction factor" shall equal "Wholesale base usage" divided by "Total suburban base deliveries." "Suburban reduction factor" shall not exceed 1.0.

(18) "HHWPD Deliveries above Oakdale" shall equal the total amount of water delivered by the HHWPD to users located above the system input meters in Oakdale. Water users located above the system input meters in Oakdale are currently represented by Groveland Community Services District and the HHWPD facility at Moccasin.

(19) "HH Reduction Factor" is calculated for the purpose of determining the Wholesale Customers' share of the Hetch Hetchy Assessment. The factor shall equal a fraction, the numerator of which is the total system input measured at the Oakdale meters (Table 1, line 12.a) and the denominator of which is the sum of the total system input measured at the Oakdale meters (Table 1, line 12.a) plus the total "HHWPD deliveries above Oakdale" (Table 1, line 18).

SECTION C. DATA REQUIREMENTS AND SCHEDULE

1. Collection and Dissemination of Data

The SFPUC presently compiles daily flow data for the County-line meters, System Input and In-Line Meters, and daily reservoir water level data, and provides copies of that data to the Wholesale Customers (through BAWSCA) on a monthly basis. The SFPUC also provides copies of wholesale "Suburban Resale" and City Retail water usage data to BAWSCA on a monthly basis. Additionally, the SFPUC provides BAWSCA access to flow data for the meters as reported and recorded by the SFPUC's SCADA system.

The SFPUC shall continue to provide the flow and water usage data described above to BAWSCA on a monthly basis, and shall continue to allow BAWSCA access to the SCADA system data, so that a coordinated effort between the SFPUC and BAWSCA will allow for updating Table 1 of this Attachment annually on a timely basis.

It shall continue to be the SFPUC's responsibility to compile the data necessary to update Table 1 of this Attachment annually and the City shall deliver to BAWSCA, for review and approval, copies of the updated Table 1 by September 15 for the fiscal year ending the preceding June 30, as shown by the schedule contained in Section C.3.

Upon reasonable notice to the General Manager of the SFPUC, BAWSCA shall be given access to all water flow and usage records compiled by the SFPUC, including raw data, at reasonable times during business hours and shall have the right to copy such records and data at its expense.

2. Lack of Data

The parties recognize that, because of human error, mechanical failure, or other unplanned events, portions of the data required for the calculation of the usage rates and ratios described in Sections B and C of this Attachment occasionally may be unavailable or incorrect. In the event that such data are unavailable or inaccurate, the SFPUC shall make a reasonable estimate of the unavailable or incorrect data or use the most accurate alternative data that are available, and substitute the estimate therefor.

If the SFPUC uses an estimate of the unavailable or inaccurate data or alternative data, it shall provide BAWSCA with the following:

(1) a description of the unavailable or inaccurate data and the estimation or substitution of data used therefor;

(2) an explanation of the cause of the missing or inaccurate data and the reasons underlying the SFPUC's estimation or substitution of alternate data; and

(3) a statement of how the error or malfunction that caused the unavailability or inaccuracy of the data will be avoided in the future.

The SFPUC shall provide this information to BAWSCA upon calculation by the SFPUC of the usage rates and ratios described in this Attachment for the fiscal year in question.

3. Schedule for Completing the Annual Calculations of Water Usage Rates

The parties recognize the importance of updating Table 1 of this Attachment annually in a timely manner, and that historically, doing so has required a coordinated effort between the SFPUC and BAWSCA. To assure timely completion of the annual calculations of water usage rates and ratios, the parties agree to adhere to the following schedule.

(1) By August 15: The SFPUC shall forward to BAWSCA all data for the fiscal year ending the preceding June 30, necessary to make a determination of the base water usage and base allocation rates for the Wholesale Customers and the City.

(2) By September 15. The City shall deliver to BAWSCA, for review and approval, draft copies of the updated Table 1 for the fiscal year ending the preceding June 30.

(3) Between September 15 and October 15. The SFPUC and BAWSCA shall reconcile any discrepancies or inaccuracies in the draft calculations of water usage rates and shall reach agreement on a final updated Table 1 for the fiscal year ending the preceding June 30.

(4) By November 1. The SFPUC shall deliver to BAWSCA a finalized updated Table 1, signed by the SFPUC General Manager, or appropriate designee, representing the water usage rates agreed upon by the SFPUC and BAWSCA, for the fiscal year ended June 30.

(5) By November 15. BAWSCA shall return the finalized Table 1 to the SFPUC, counter-signed by the BAWSCA General Manager/CEO. If the SFPUC does not receive the countersigned Table 1 from BAWSCA by November 15, it may use the water use data as contained in the Table 1 delivered pursuant to paragraph (4) above, subject to arbitration as provided in section 8.01 of the Agreement.

SECTION D. COUNTY LINE AND IN-CITY TERMINAL RESERVOIR METER CALIBRATION AND MAINTENANCE

1. General

This section refers only to the County-Line and In-City Terminal Reservoir Meters. The term "meter(s)" includes the primary meter itself (most of the primary meters in the SFPUC's water system are Venturi-type flow meters) as well as any and all of the associated equipment used to measure, record, and transmit flow and water level data. The metering equipment associated with the primary metering device (also referred to as the secondary metering equipment) includes differential pressure transmitters, recorders, telecommunications equipment and the portion of the SFPUC's Supervisory Control and Data Acquisition (SCADA) System that is used to transmit flow and water level measurements from the water meter to the computer terminal that records the measured data.

The County-Line and In-City Terminal Reservoir meters, their general locations, and their associated metering equipment are listed in Table 4.

2. Frequency and Type of Work to be Performed

The meters, water level sensors, and associated metering equipment are to be inspected, tested, calibrated, and maintained according to the applicable meter calibration and maintenance frequency specified in Table 5.

3. Components of the Calibration and Maintenance Work

The SFPUC will contract with an independent metering consultant to perform periodic inspections, testing, servicing and calibrations of the meters and metering equipment for the County-line meters and In-City Terminal Reservoirs. The metering consultant's calibration and maintenance work will include the following components:

- Annual Pitot Tube Tests: Pitot tube flow tests shall be performed once a year on all Venturi-type flow meters. See Sections 4.b and 4.c for further detail.

- Quarterly Secondary Meter Equipment Testing and Calibration: The secondary metering equipment shall be tested for accuracy and calibrated quarterly at five input levels (0%, 25%, 50%, 75% and 100% of the full range of flow). See Section 4.a for further detail.

- Cleaning: Clean and remove dust, oils, dirt, etc. from all instruments.

- Flushing: Flush and clean Venturi tube differential pressure (D/P) sensing lines.

- Inspecting: Inspections for mechanical fatigue, leaky pipes and fittings, worn parts, and improper operation of electrical/electronic equipment.

- Lubrication: Mechanical parts shall be lubricated as needed.

4. Calibration Procedures

The metering consultant shall continue to calibrate and maintain the County-line meters and metering equipment listed in Table 4 in accordance with the frequency of work specified in Table 5. The work includes documenting meter readings and accuracy before and after calibration. Specific tasks to be completed by the metering consultant are as follows:

a) Quarterly testing and calibration. The secondary metering equipment shall be tested and calibrated quarterly using NIST Traceable test equipment, and a "dead weight tester."

The system loop error for the secondary metering equipment is determined by connecting its output to the differential pressure transmitter and adjusting the dead weight tester to 5 places over the full range of flow: 0%, 25%, 50%, 75% and 100%, while all instruments in the loop are connected. For water level transmitters, provide simulated test head equal to full range of the transmitter being calibrated, comparing the simulated test head to its 4-20 milliamp output signal to determine transmitter error and calibration requirements. The system loop error for the secondary metering equipment may not exceed +/-2%. The individual components of the secondary metering equipment shall also be tested at the same 5 input levels and calibrated as necessary to ensure the error of the system and individual components does not exceed +/- 2%.

b) Annual Pitot Tube Testing and Calibration. Annual Pitot tube testing shall be conducted for a comparison of flow totalized by the Pitot tube test equipment and the totalizer used by the SFPUC for water measurement and billing purposes. Annual Pitot tube flow testing shall be performed on all flow meters for assessment of Venturi error using the Annubar continuous flow method at 22% of the pipe radius. Pitot tube flow testing must be conducted continuously for a minimum of 30 minutes per test.

The Pitot tube flow tests are first performed before any of the secondary metering instruments are calibrated to determine the total system error (system consisting of the primary metering device and secondary metering equipment). Once the total system loop error has been established, perform secondary loop instrument testing and calibration as per the quarterly testing and calibration procedures described in 4.a above. If the total system error exceeds +/- 2% after calibration of the secondary metering equipment, minor adjustments to the differential pressure transmitter shall be made to correct (calibrate) the error in the Venturi meter. Repeat Pitot tube testing must be performed after the individual instrument calibration and differential pressure transmitter adjustments have been performed to establish that total system loop error is within +/- 2%.

c) Pitot tube testing shall be conducted at a flow rate representing the typical flow for the meter (and, if operationally possible, at three different flows ranging from a minimum to near maximum capacity flow).

d) The metering consultant shall perform the meter testing and calibration procedures utilizing the meter characteristic curves (for example, the pressure drop vs. flow for a Venturi meter) that have been obtained during previous meter calibration and maintenance work.

e) During each quarterly site visit, the metering consultant shall inspect, assess and document the condition of all metering equipment, including meter, gauges, indicators, recorders, transmitters and other instrumentation, used in the measurement and recording of flow rates and cumulative flow totals and shall document all operational problems with the calibration instruments and meters during the calibration process. Problems may include air entrainment, leakage, flow disturbance and unstable meter readings.

f) Prior to each quarterly site visit, the metering consultant shall review prior calibration records and reports for each meter to determine if previously-identified errors or equipment deficiencies were corrected as previously recommended.

g) Each quarter, the metering consultant shall submit a final report (See Section 6) containing all of the calibration results for each meter tested and calibrated during the quarter. The metering consultant's report shall include a narrative description of the work conducted on each meter and meter calibration reports for the individual metering equipment. The quarterly report shall also address deficiencies that were not previously corrected according to the recommendations made in the prior report.

5. Calibration Instruments

The instrument used for flow testing of the primary meter (Venturi) must meet the accuracy standards required by the American Water Works Association (AWWA), and be

capable of measuring actual flows with an error of less than +/- 2%. If a particular calibration instrument is not rated for accuracy by the AWWA, its accuracy will be determined by reference to its manufacturer's representations as to accuracy.

6. Calibration Reports

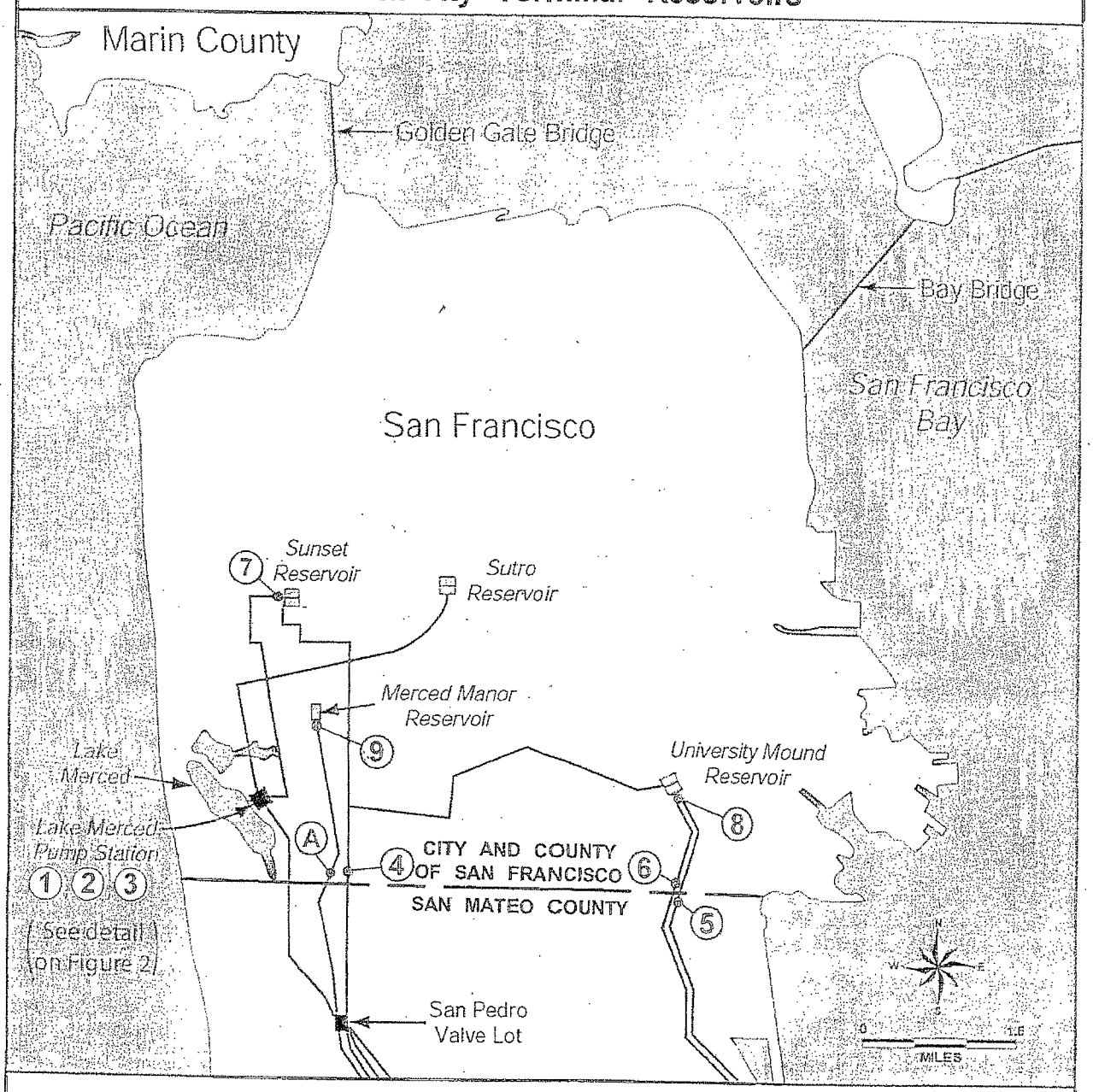
Within fourteen (14) working days after the beginning of each quarter, the metering consultant shall submit a written progress report of the work performed during the previous quarter. Each quarterly report will describe the results of the meter calibrations and any other tasks performed. The report will also include comments regarding any observations of abnormal conditions and any recommendations regarding these meters and their related equipment.

The reports must include complete descriptions and status of meters and related equipment, dates and times of service, all calibration specifics, pipeline dimensions, range of flow rates and totalized volumes, before and after error analysis and accuracy levels achieved, testing equipment used, and the name(s) of the person(s) that performed the work.

When appropriate and necessary, the metering consultant shall provide recommendations for improving the accuracy and reliability of the equipment and/or the methods of data collection. If, in the opinion of the metering consultant, the condition of a meter or its associated metering equipment is found to be defective, damaged, or otherwise in need of immediate repair or replacement, the metering consultant shall: 1) promptly notify the appropriate SFPUC personnel of the problem and recommend a solution to the problem so that the SFPUC can determine how to address it and, 2) include the problem description in its quarterly report.

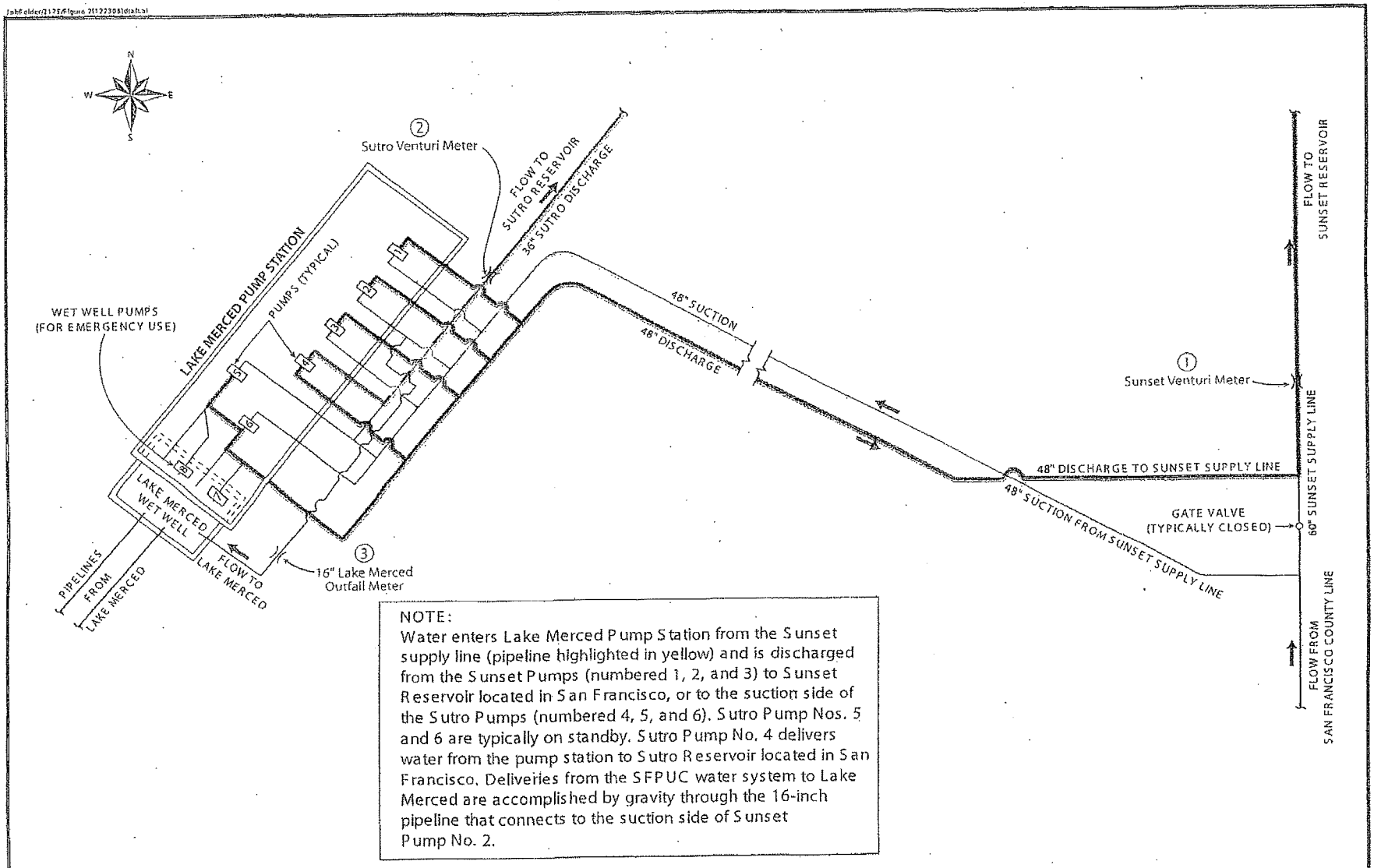
FIGURE 1

Locations of SFPUC County-Line Meters and In-City Terminal Reservoirs



METER	PIPELINE	LOCATION
1	Sunset	Lake Merced Pump Station
2	Sutro	Lake Merced Pump Station
3	Lake Merced Outfall	Lake Merced Pump Station
4	San Andreas No. 2	Junipero Serra (Hwy. 280) South of Belle Ave.
5	Crystal Springs No. 1	PG&E Martin Service Center Yard
6	Crystal Springs No. 2	Tamasco Ct. South of Sunnydale Ave.
A	San Andreas No. 3 (Planned)	To be determined

METER	RESERVOIR	LOCATION
7	Sunset Reservoir	26th Avenue and Ortega
8	University Mound Reservoir	University Avenue and Bacon
9	Merced Manor Reservoir	23rd Avenue and Ocean



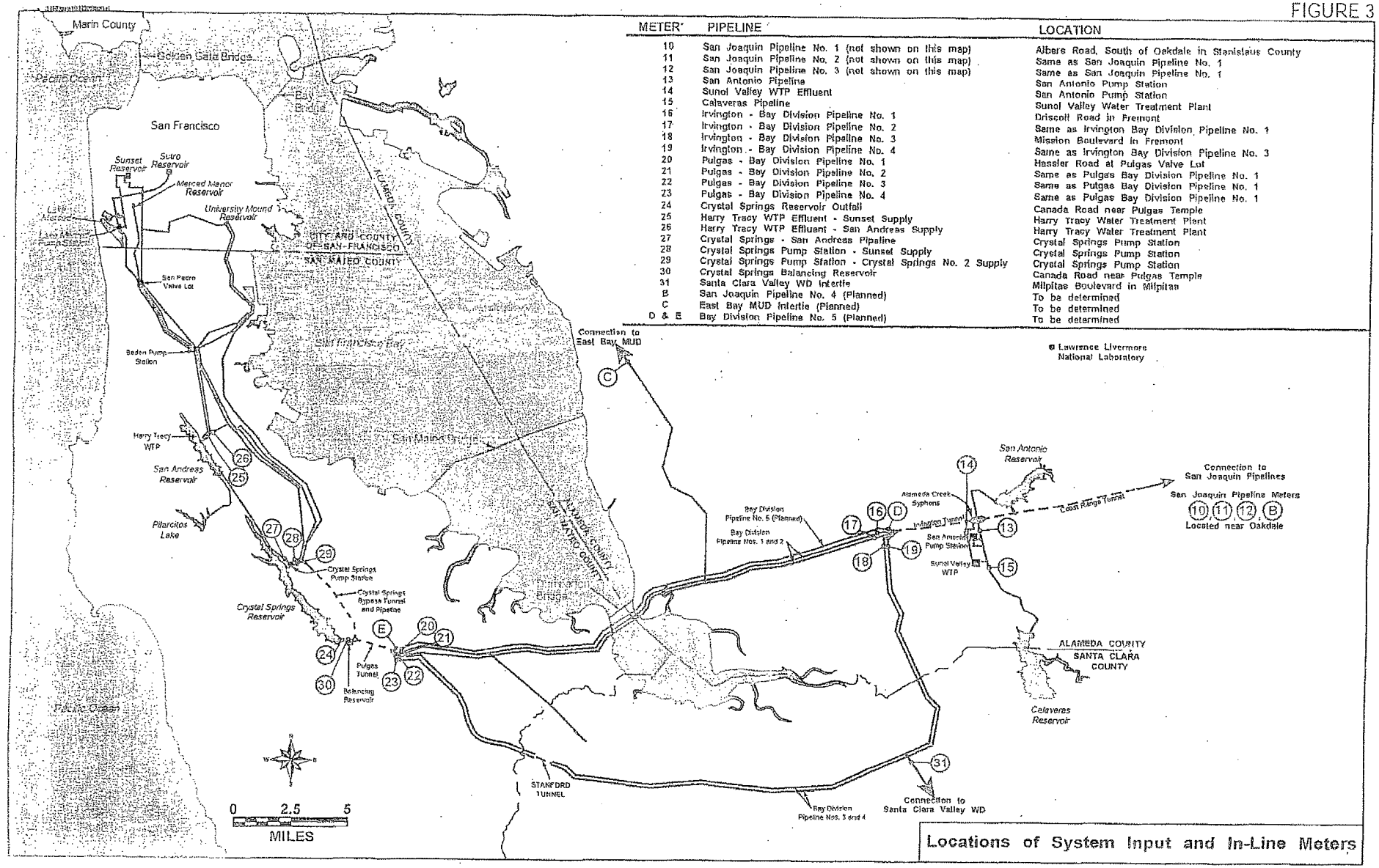
NOTE:
Water enters Lake Merced Pump Station from the Sunset supply line (pipeline highlighted in yellow) and is discharged from the Sunset Pumps (numbered 1, 2, and 3) to Sunset Reservoir located in San Francisco, or to the suction side of the Sutro Pumps (numbered 4, 5, and 6). Sutro Pump Nos. 5 and 6 are typically on standby. Sutro Pump No. 4 delivers water from the pump station to Sutro Reservoir located in San Francisco. Deliveries from the SFPUC water system to Lake Merced are accomplished by gravity through the 16-inch pipeline that connects to the suction side of Sunset Pump No. 2.

Generalized Schematic of Lake Merced P[illegible] Station

FIGURE 2

FIGURE 3

METER	PIPELINE	LOCATION
10	San Joaquin Pipeline No. 1 (not shown on this map)	Albers Road, South of Oakdale in Stanislaus County
11	San Joaquin Pipeline No. 2 (not shown on this map)	Same as San Joaquin Pipeline No. 1
12	San Joaquin Pipeline No. 3 (not shown on this map)	Same as San Joaquin Pipeline No. 1
13	San Antonio Pipeline	San Antonio Pump Station
14	Sunol Valley WTP Effluent	San Antonio Pump Station
15	Calaveras Pipeline	Sunol Valley Water Treatment Plant
16	Irvington - Bay Division Pipeline No. 1	Driscoll Road in Fremont
17	Irvington - Bay Division Pipeline No. 2	Same as Irvington Bay Division Pipeline No. 1
18	Irvington - Bay Division Pipeline No. 3	Mission Boulevard in Fremont
19	Irvington - Bay Division Pipeline No. 4	Same as Irvington Bay Division Pipeline No. 3
20	Pulgas - Bay Division Pipeline No. 1	Hassler Road at Pulgas Valve Lot
21	Pulgas - Bay Division Pipeline No. 2	Same as Pulgas Bay Division Pipeline No. 1
22	Pulgas - Bay Division Pipeline No. 3	Same as Pulgas Bay Division Pipeline No. 1
23	Pulgas - Bay Division Pipeline No. 4	Same as Pulgas Bay Division Pipeline No. 1
24	Crystal Springs Reservoir Outfall	Canada Road near Pulgas Temple
25	Harry Tracy WTP Effluent - Sunset Supply	Harry Tracy Water Treatment Plant
26	Harry Tracy WTP Effluent - San Andreas Supply	Harry Tracy Water Treatment Plant
27	Crystal Springs - San Andreas Pipeline	Crystal Springs Pump Station
28	Crystal Springs Pump Station - Sunset Supply	Crystal Springs Pump Station
29	Crystal Springs Pump Station - Crystal Springs No. 2 Supply	Crystal Springs Pump Station
30	Crystal Springs Balancing Reservoir	Canada Road near Pulgas Temple
31	Santa Clara Valley WD Intertie	Milpitas Boulevard in Milpitas
B	San Joaquin Pipeline No. 4 (Planned)	To be determined
C	East Bay MUD Intertie (Planned)	To be determined
D & E	Bay Division Pipeline No. 5 (Planned)	To be determined



Locations of System Input and In-Line Meters

Table 1
Base Usage (mgd) and Allocation Rates

(1) Usage	(2) Definition	(3) 2004-05	(4) 2005-06	(5) 2006-07	(6) 2007-08	(7) 2008-09	(8) 2009-10
1. Gross S.F. Co. line	B.1	79.5	78.3	75.7			
2. Daly City portion	B.2	0.2	0.2	0.2			
3. Net S.F.	(1-2)	79.3	78.1	75.5			
4. Other suburban raw water	B.4	0.4	0.5	0.7			
5. Other suburban treated water	B.5	4.1	3.4	3.9			
6. Total other suburban	(4+5)	4.5	3.9	4.6			
7. Total City usage	(3+6)	83.8	82.0	80.1			
8. Total wholesale usage	B.8	167.4	164.4	175.8			
9. Total system usage	(7+8)	251.2	246.4	255.9			
10. Wholesale alloc. rate	(8/9)	66.63%	66.72%	68.70%			
11. City alloc. rate	(100%-10)	33.37%	33.28%	31.30%			
12a. HHWPD input (Oakdale)	B.12	194.7	202.6	227.3			
12b. Deliveries to LLNL	B.12	-0.4	-0.9	-0.9			
12c. HH to San Ant. Res.	B.12	-3.8	-1.8	-11.6			
12d. Sunol Valley WTP	B.12	28.5	29.4	17.6			
12e. Harry Tracy WTP	B.12	45.2	40.4	41.2			
12f. Raw water deliveries	B.12	0.4	0.4	0.7			
12g. Deliveries to Coastside Co. WD	B.12	1.8	1.6	2.1			
12h. Crys. Sprs. Bal. Res.	B.12	0.0	0.0	0.0			
12i. Spill to CS Res.	B.12	-19.9	-42.6	-37.1			
12j. Terminal Reservoirs	B.12	0.0	0.0	0.0			
12k. Other sources	B.12	0.0	1.9	3.8			
13. Total system input	B.13	246.5	231.0	243.1			
14. Jt. sys. loss red. fact.	(9/13)	1.0000	1.0000	1.0000			
15. Daly City red. factor	(3/1)	0.9975	0.9974	0.9974			
16. Total suburban	(6+8)	171.9	168.3	180.4			
17. Suburban red. factor	(8/16)	0.9736	0.9768	0.9745			
18. HHWPD Deliveries above Oakdale	B.18						
19. HH Reduction Factor	B.19	99.56%					

Table 2
Locations of SFPUC County-Line Meters and In-City Terminal Reservoirs

County-Line Meters

Meter	Pipeline	Location
1	Sunset	Lake Merced Pump Station
2	Sutro	Lake Merced Pump Station
3	Lake Merced Outfall	Lake Merced Pump Station
4	San Andreas No. 2	Junipero Serra (Hwy. 280) South of Belle Ave.
5	Crystal Springs No. 1	PG&E Martin Service Center Yard
6	Crystal Springs No. 2	Tamasco Ct. South of Sunnydale Ave.
A	San Andreas No. 3 (Planned)	To be determined

In-City Terminal Reservoirs

Meter	Reservoir	Location
7	Sunset Reservoir	26th Avenue and Ortega
8	University Mound Reservoir	University Avenue and Bacon
9	Merced Manor Reservoir	23rd Avenue and Ocean

Table 3
Locations of SFPUC System Input and In-Line Meters

Meter	Pipeline	Location
10	San Joaquin Pipeline No. 1	Albers Road, South of Oakdale in Stanislaus County
11	San Joaquin Pipeline No. 2	Same as San Joaquin Pipeline No. 1
12	San Joaquin Pipeline No. 3	Same as San Joaquin Pipeline No. 1
13	San Antonio Pipeline	San Antonio Pump Station
14	Sunol Valley WTP Effluent	San Antonio Pump Station
15	Calaveras Pipeline	Sunol Valley Water Treatment Plant
16	Irvington – Bay Division Pipeline No. 1	Driscoll Road in Fremont
17	Irvington – Bay Division Pipeline No. 2	Same as Irvington Bay Division Pipeline No.1
18	Irvington – Bay Division Pipeline No. 3	Mission Boulevard in Fremont
19	Irvington – Bay Division Pipeline No. 4	Same as Irvington Bay Division Pipeline No.3
20	Pulgas – Bay Division Pipeline No. 1	Hassler Road at Pulgas Valve Lot
21	Pulgas – Bay Division Pipeline No. 2	Same as Pulgas Bay Division Pipeline No. 1
22	Pulgas – Bay Division Pipeline No. 3	Same as Pulgas Bay Division Pipeline No. 1
23	Pulgas – Bay Division Pipeline No. 4	Same as Pulgas Bay Division Pipeline No. 1
24	Crystal Springs Reservoir Outfall	Canada Road near Pulgas Temple
25	Harry Tracy WTP Effluent – Sunset Supply	Harry Tracy Water Treatment Plant
26	Harry Tracy WTP Effluent – San Andreas Supply	Harry Tracy Water Treatment Plant
27	Crystal Springs – San Andreas Pipeline	Crystal Springs Pump Station
28	Crystal Springs Pump Station – Sunset Supply	Crystal Springs Pump Station
29	Crystal Springs Pump Station – Crystal Springs No. 2 Supply	Crystal Springs Pump Station
30	Crystal Springs Balancing Reservoir	Canada Road near Pulgas Temple
31	Santa Clara Valley WD Intertie	Milpitas Boulevard in Milpitas
B	San Joaquin Pipeline No. 4 (Planned)	To be determined
C	East Bay MUD Intertie (Planned)	To be determined
D&E	Bay Division Pipeline No. 5 (Planned)	To be determined

TABLE 4
SFPUC COUNTY-LINE METERS, IN-CITY TERMINAL RESERVOIRS, AND ASSOCIATED METERING EQUIPMENT

County-Line Meter	Meter Type	Location
1. **Sunset**	60" Venturi	Lake Merced Pump Station
Associated Metering Equipment:	• Rosemount D/P transmitter • Honeywell recorder • SCADA	
2. **Sutro**	36" Venturi	Lake Merced Pump Station
Associated Metering Equipment:	• Rosemount D/P transmitter • Honeywell recorder • SCADA	
3. **Lake Merced Outfall**	16" Mag. Meter	Lake Merced Pump Station
Associated Metering Equipment:	• Honeywell recorder • SCADA	
4. **San Andreas No. 2**	36" Venturi	Junipero Serra (Hwy. 280) south of Belle Avenue
Associated Metering Equipment:	• Yokogawa D/P transmitter • NLS display • AGM electronics • Honeywell recorder • SCADA	
5. **Crystal Springs No. 1**	44" Venturi	PG&E Martin Service Center Yard
Associated Metering Equipment:	• Yokogawa D/P transmitter • NLS display • AGM electronics • Honeywell recorder • SCADA	
6. **Crystal Springs No. 2**	60" Venturi	Tamasco Ct. south of Sunnydale Avenue
Associated Metering Equipment:	• Yokogawa D/P transmitter • NLS display • AGM electronics • SCADA	
In-City Terminal Reservoirs		
1. **Sunset**	Pressure Transducer	26th Avenue and Ortega
Associated Metering Equipment:	• Honeywell recorder • SCADA	
2. **Merced-Manor**	Pressure Transducer	23rd Avenue and Ocean
Associated Metering Equipment:	• Honeywell recorder • SCADA	
3. **University Mound**	Pressure Transducer	University Avenue and Bacon
Associated Metering Equipment:	• Honeywell recorder • SCADA	

TABLE 5
METER CALIBRATION AND MAINTENANCE FREQUENCY

METER/ EQUIPMENT	FREQUENCY			WORK TO BE PERFORMED (See Work Codes Listed Below)					
	Quarterly	Semi-Annual	Annual	CA	CL	FL	IN	LU	PT
Venturi Meters			X	X		X (1)	X (1)		X
Magnetic Meters		X		X (2)	X (2)		X (2)		
Yokagowa D/P Transmitters	X			X	X	X	X		
Rosemount D/P Transmitters	X			X	X	X	X		
Honeywell Recorders	X			X	X		X		
Water Level Sensors (Pressure Transducers)	X			X	X		X		
SCADA Electronics	X			X					
AGM Electronics	X			X					
NLS Digital Displays	X			X					
Electrostatic 24V DC Power Supplies			X				X (3)	-	
ASCO Solenoids			X		X		X (4)	X	

WORK CODES:
CA = CALIBRATE; CL = CLEAN; FL = FLUSH; IN = INSPECT; LU = LUBRICATE; PT = PITOT TUBE TEST.

NOTES:
(1) Inspection and flushing requirements for Venturi meters refer to the pressure tubing from the meter to the differential pressure transmitter.
(2) May calibrate using clamp-on meter where conditions allow. Inspection and cleaning requirements for magnetic meters refer to the sensors or probes that are inserted through the pipe wall.
(3) Adjust voltage if necessary.
(4) Replace rubber ware as needed.

ATTACHMENT K-1

WHOLESALE CUSTOMERS' SHARE OF NET BOOK VALUE OF EXISTING ASSETS

PRELIMINARY - TO BE SUBSTITUTED WITH FINAL 6/30/09 VALUES

(Section 5.03)

	Notes	Projected Value		
		Water	Hetch Hetchy	Total
Regional System Net Plant as of 6/30/08 (Actual)	1	$ 435,639,907	$ 66,135,724	
Less: Projected Depreciation on Regional Assets	2	$ (32,526,143)	$ (3,598,189)	
Plus: Projected FY 2008-09 Capital Additions	3	$ 62,771,153	$ -	
Projected Regional System Net Plant as of 6/30/09		$ 465,884,917	$ 62,537,535	
Plus: Projected Construction Work In Progress (CWIP) as of 6/30/09	4	$ 16,928,503	$ 5,807,023	
Projected Regional System Net Plant and CWIP as of 6/30/09		$ 482,813,420	$ 68,344,558	$ 551,157,978
Allocation Factor:	5	70.1%	64.2%	
Wholesale Share of Projected Regional System Net Plant as of 6/30/09		$ 326,585,327	$ 40,149,098	$ 366,734,424
Plus: Wholesale Share of Projected CWIP as of 6/30/09	6	$ 11,866,881	$ 3,728,109	$ 15,594,989
Wholesale Share of Projected Net Plant and CWIP as 6/30/09		$ 338,452,207	$ 43,877,206	$ 382,329,414
Interest Rate:		5.13%	5.13%	
Term (Yrs):		25	25	
Monthly Principal & Interest		$ 2,004,277	$ 259,836	$ 2,264,113
Annual Wholesale Revenue Requirement Amount		$ 24,051,326	$ 3,118,033	$ 27,169,359

Notes

1 FAACS 120A Report as of 6/30/08

2 SFPUC Estimate

3 SFPUC Estimate based on projects and amounts as follows:

	Water Assets
CUW358 Sunset Reservoir (North Basin)	$ 57,382,744
CUW 365 Cross Connection Controls	$ 3,679,415
CUW 394 Watershed Land Acqusition	$ 1,708,994
Total Additions	$ 62,771,153

4 CWIP based on balance as 6/30/08 plus YTD expenditures (see Attachment K-2)

5 Fixed allocation factors based on dollar weighted 5-year average of J-Table allocation factors (2003-04 through 2007-08)

6 Wholesale share CWIP based on balance as 6/30/08 plus YTD expenditures (see Attachment K-2)

ATTACHMENT K-2

WHOLESALE CUSTOMERS' SHARE OF THE BOOK VALUE OF REVENUE FUNDED CAPITAL EXPENDITURES

PRELIMINARY - TO BE SUBSTITUTED WITH FINAL 6/30/09 VALUES

(Section 5.03)

[1] Project No.	[2] Project Description	[3] Rate Class	[4] CWIP as of 6/30/08	[5] FY 2008-09 Expenditures	[6] Reduction for 02A Funding	[7] CWIP as 6/30/09	[8] Water Related CWIP	[9] Wholesale Share	
A.	Water Enterprise								
1.	Regional Projects								
CUW352	Alameda Creek Fishery	Joint	$ 2,007,607	$ 224,582	$ 2,232,189	$ -		$ -	
CUW353	Seismic Upgrade @ Hayward Fault	Joint	$ 3,129,234	$ 1,967,625	$ 5,096,859	$ -		$ -	
CUW354	LOWER CRYSTAL SPRINGS DAM-REV-SFWD	Joint	$ 7,046,944	$ 1,086,262	$ 8,133,206	$ -		$ -	
CUW355	STANDBY POWER FACILITIES	Joint	$ 3,715,276	$ 6,596,849	$ 10,312,125	$ -		$ -	
CUW357	Adit Leak Repairs	Joint	$ 783	$ 1,129	$ 1,912	$ -		$ -	
CUW359	Irvington Tunnel	Joint	$ 21,391,129	$ 5,176,713	$ 26,567,842	$ -		$ -	
CUW359	Irvington Tunnel	Joint	$ 7,837,176	$ -	$ 7,837,176	$ -		$ -	
CUW361	Pulgas Balancing Reservoir	Joint	$ 368,057	$ 1,383,959	$ 1,752,016	$ -		$ -	
CUW361	Pulgas Balancing Reservoir	Joint	$ 1,255,545	$ -	$ 1,255,545	$ -		$ -	
CUW361	Pulgas Balancing Reservoir	Joint	$ 1,248,002	$ -	$ 1,248,002	$ -		$ -	
CUW361	Pulgas Balancing Reservoir	Joint	$ 570,179	$ -	$ 570,179	$ -		$ -	
CUW361	Pulgas Balancing Reservoir	Joint	$ 712,921	$ -	$ 712,921	$ -		$ -	
CUW363	SCADA Phase II	Joint	$ 1,335,371	$ 1,738,045	$ 3,073,416	$ -		$ -	
CUW363	SCADA Phase II	Joint	$ 1,062,050	$ -	$ 1,062,050	$ -		$ -	
CUW365	Cross Connection Control	Joint	$ 3,635,172	$ 547,801	$ 4,182,973	$ -		$ -	Capitalized in FY 2008-09
CUW367	HTWTP LT Impr	Joint	$ 8,011,348	$ 2,479,731	$ 10,491,079	$ -		$ -	
CUW368	BDPL Hydraulic Capacity	Joint	$ 23,640,601	$ -	$ 23,640,601	$ -		$ -	
CUW368	BDPL Hydraulic Capacity	Joint	$ 17,556,905	$ 4,200,442	$ 21,757,347	$ -		$ -	
CUW368	BDPL Hydraulic Capacity	Joint	$ 2,579,847	$ -	$ 2,579,847	$ -		$ -	
CUW370	Pipeline Readiness	Joint	$ 5,320,934	$ 328,070	$ 5,649,004	$ -		$ -	
CUW371	CSPS and Pipeline	Joint	$ 11,420,770	$ 3,872,779	$ 15,293,549	$ -		$ -	
CUW372	University Mound (N)	Joint	$ 4,624,981	$ 1,068,147	$ 5,693,128	$ -		$ -	
CUW373	SJPL	Joint	$ 19,479,341	$ 6,023,849	$ 25,503,190	$ -		$ -	
CUW373	SJPL	Joint	$ 7,199,051	$ -	$ 7,199,051	$ -		$ -	
CUW374	Calaveras Dam	Joint	$ 31,171,669	$ 4,314,430	$ 35,486,099	$ -		$ -	
CUW374	Calaveras Dam	Joint	$ 2,366,343	$ -	$ 2,366,343	$ -		$ -	
CUW378	CSPL #2	Joint	$ 7,453,098	$ 913,369	$ 8,366,467	$ -		$ -	
CUW379	SAPL #3	Joint	$ 5,728,934	$ 588,346	$ 6,317,280	$ -		$ -	
CUW380	BDPK #3&4 Crossovers	Joint	$ 3,855,357	$ 1,083,888	$ 4,939,245	$ -		$ -	
CUW381	SVWTP Expansion	Joint	$ 5,450,995	$ -	$ 5,450,995	$ -		$ -	
CUW381	SVWTP Expansion	Joint	$ 53,222	$ 3,090,520	$ 3,143,742	$ -		$ -	
CUW381	SVWTP Expansion	Joint	$ 97,373	$ -	$ 97,373	$ -		$ -	
CUW382	SVWTP Treated Water Reservoir	Joint	$ 5,799,505	$ 575	$ 5,800,080	$ -		$ -	
CUW384	Tesla	Joint	$ 6,102,621	$ 7,444,942	$ 13,547,563	$ -		$ -	
CUW386	SAPS X-CONNECT & PUMP IMP 96A UEB	Joint	$ 1,374,491	$ 971,625	$ 2,346,116	$ -		$ -	
CUW388	PEIR	Joint	$ 896,476	$ 1,641,717	$ 2,538,193	$ -		$ -	
CUW388	PEIR	Joint	$ 1,331,676	$ -	$ 1,331,676	$ -		$ -	
CUW390	Desalination Pilot	Joint	$ 175,165	$ -	$ 175,165	$ -		$ -	
CUW391	Baden/San Pedro Valve Lots	Joint	$ 3,964,642	$ 948,589	$ 4,913,231	$ -		$ -	
CUW392	Program Management	Joint	$ 2,452,297	$ 5,081,444	$ 7,533,741	$ -		$ -	
CUW393	BDPL #4 Condition Assessment	Joint	$ 25,071	$ 294,634	$ 319,705	$ -		$ -	
CUW394	Watershed Enviroment Improvement	Joint	$ 142,924	$ 96,027	$ 238,951	$ -		$ -	
CUW101	SAN ANDREAS PLANT EXPANSION #1	Joint	$ 182	$ 96,027		$ 96,209		$ 67,443	Capitalized in FY 2008-09
CUW111	LOWER CRYSTAL SPRINGS DAM-REV-SFWD	Joint	$ 40,436	$ -		$ 40,436		$ 28,346	
CUW151	Baden PS	Joint	$ 921	$ 26,760		$ 27,681		$ 19,404	
CUW161	Water Treatment Facilities	Joint	$ 75,801	$ 605		$ 76,406		$ 53,561	
CUW178	SAPS X-CONNECT & PUMP IMP 96A UEB	Joint	$ 104,902	$ -		$ 104,902		$ 73,536	
CUW202	Replace PCCP	Joint	$ 50,808	$ -		$ 50,808		$ 35,616	
CUW202	Replace PCCP	Joint	$ 285,003	$ 64,256		$ 349,259		$ 244,831	
CUW202	Replace PCCP	Joint	$ 2,365	$ -		$ 2,365		$ 1,658	
CUW127	SCADA	Joint	$ 50,029	$ 2,481,274		$ 2,531,303		$ 1,774,443	
CUW356	New Crystal Springs Bypass Tunnel	Joint	$ 13,992,264	$ 5,560,862	$ 16,028,397	$ 3,524,729		$ 2,470,835	
CUW358	Sunset (N)	Joint	$ 52,494,764	$ 4,887,980	$ 55,806,081	$ 1,576,663		$ 1,105,241	Capitalized in FY 2008-09
CUW387	Tesla Portal Disinfection	Joint	$ 2,377,262	$ (1,996)	$ 1,223,945	$ 1,151,321		$ 807,076	
CUW135	New Lines and Bypass Valves	Joint	$ 45,413	$ -		$ 45,413		$ 31,835	
CUW135	New Lines and Bypass Valves	Joint	$ 153,983	$ 620,156		$ 774,139		$ 542,671	
CUW135	New Lines and Bypass Valves	Joint	$ 8,860	$ -		$ 8,860		$ 6,211	
CUW143	HH Water Treatment Plan	Joint	$ 5,656	$ -		$ 5,656		$ 3,965	
CUW143	HH Water Treatment Plan	Joint	$ 709,972	$ 8,817		$ 718,789		$ 503,871	
CUW143	HH Water Treatment Plan	Joint	$ 96,292	$ -		$ 96,292		$ 67,501	
CUW186	SVWTP IMPROVEMENT PROJECT-CPB-SFWD	Joint	$ 3,604	$ -		$ 3,604		$ 2,526	
CUW206	Tesla Portal/Thomas Shaft Emergency Disinfection	Joint	$ 4,365	$ -		$ 4,365		$ 3,060	
CUW206	Tesla Portal/Thomas Shaft Emergency Disinfection	Joint	$ 283,620	$ 5,665		$ 289,285		$ 202,789	
CUW206	Tesla Portal/Thomas Shaft Emergency Disinfection	Joint	$ 227,004	$ -		$ 227,004		$ 159,130	
CUW231	Millbrae Labs	Joint	$ 81,856	$ 34,685		$ 116,541		$ 81,695	
CUW236	TELSA/SJVH WQ MONITORING IMPR	Joint	$ 152,963	$ -		$ 152,963		$ 107,227	
CUW366	HTWTP ST Improvements	Joint	$ 16,523	$ -		$ 16,523		$ 11,583	
CUW366	HTWTP ST Improvements	Joint	$ 1,398,798	$ 5,732,626	$ 7,131,424	$ -		$ -	
CUW366	HTWTP ST Improvements	Joint	$ 1,452,901	$ -	$ 1,452,901	$ -		$ -	
CUW120	WATER QUALITY PLANNING STUDY	Joint	$ 577	$ -		$ 577		$ 404	
CUW164	WATER VULNERABILITY STUDY-UEB	Joint	$ 479	$ -		$ 479		$ 336	
CUW181	STANDBY POWER FACILITIES	Joint	$ 5,905	$ -		$ 5,905		$ 4,139	
CUW210	Millbrae Administrative Bldg Remodel	Joint	$ 7,803	$ 321,553		$ 329,356		$ 230,879	
CUW220	Calaveras Dam Evaluation	Joint	$ 308,971	$ -		$ 308,971		$ 216,589	
CUW227	Watershed Facilities and Fencing	Joint	$ 190,552	$ 206,448		$ 397,000		$ 278,297	
CUW228	Watershed Roads	Joint	$ 358,434	$ 85,337		$ 443,771		$ 311,083	
CUW232	Crystal Springs Dam Discharge	Joint	$ 363,823	$ -		$ 363,823		$ 255,040	
CUW242	Demolition of Unsafe Structures	Joint	$ 311,548	$ 22,741		$ 334,289		$ 234,337	
CUW242	Demolition of Unsafe Structures	Joint	$ 315	$ -		$ 315		$ 221	
CUW261	Regional R&R - Storage	Joint	$ 275,694	$ 277,958		$ 553,652		$ 388,110	
CUW262	Regional R&R - Treatement	Joint	$ 1,236,895	$ 409,282		$ 1,646,177		$ 1,153,970	
CUW262	Regional R&R - Treatement	Joint	$ 277,383	$ -		$ 277,383		$ 194,445	

5/6/2009

ATTACHMENT K-2

WHOLESALE CUSTOMERS' SHARE OF THE BOOK VALUE OF REVENUE FUNDED CAPITAL EXPENDITURES

PRELIMINARY - TO BE SUBSTITUTED WITH FINAL 6/30/09 VALUES

(Section 5.03)

[1] Project No.	[2] Project Description	[3] Rate Class	[4] CWIP as of 6/30/08	[5] FY 2008-09 Expenditures	[6] Reduction for 02A Funding	[7] CWIP as 6/30/09	[8] Water Related CWIP	[9] Wholesale Share
CUW263	Regional R&R - Transmission	Joint	$ 768,422	$ 797,659		$ 1,566,081		$ 1,097,823
CUW263	Regional R&R - Transmission	Joint	$ 1,224,094	$ -		$ 1,224,094		$ 858,090
CUW360	PLANNING - WSTD Sunol Quarry Reservoirs	Joint	$ 2,513	$ -		$ 2,513		$ 1,762
CUW934	BOA/BAW/13/F2/SFWD-CONT PROJ-OPER FD	Joint	$ 59,479	$ (2,210)	$ 998,005	$ (940,736)		$ (659,456)
	TOTAL REGIONAL WATER PROJECTS		$ 313,100,517	$ 84,802,574	$379,397,925	$ 18,505,166		$ 12,972,121
	Less Projects to be Capitalized in FY 2008-09					$ 1,576,663		$ 1,105,241
	ADJUSTED TOTAL REGIONAL WATER PROJECTS					$ 16,928,503		$ 11,866,881
2	Wholesale Direct							
	None							
8.	Hetch Hetchy Water & Power							
CUH703	Priest Reservoir By-pass	Joint	-	47,164		$ 47,164	$ 21,224	$ 13,626
CUH762	SJPL Repairs	Water	53,616	255,011		$ 308,627	$ 308,627	$ 198,139
CUH766	HH Security Improvements	Joint	164,478	261,601		$ 426,079	$ 191,736	$ 123,094
CUH767	Power Transformers	Power	-	-		$ -	$ -	$ -
CUH803	Street Lights	Power	-	40,506		$ 40,506	$ -	$ -
CUH804	HH Roads	Joint	-	341,240		$ 341,240	$ 153,558	$ 98,584
CUH829	HH SCADA	Joint	-	-		$ -	$ -	$ -
CUH842	Moccasin Cottages Renovations	Joint	-	-		$ -	$ -	$ -
CUH846	New Moccasin Penstock	Power	543,073	-		$ 543,073	$ -	$ -
CUH851	Turbine Generator Renovations	Power	111,755	926,254		$ 1,038,009	$ -	$ -
CUH868	Moccasin Energy Absorber	Power	-	-		$ -	$ -	$ -
CUH876	Moccasin Phone System	Joint	-	15,677		$ 15,677	$ 7,055	$ 4,529
CUH878	O'Shaugnessy Discharge/Toulumne River Channel Impr.	Joint	31,953	168,076		$ 200,029	$ 90,013	$ 57,788
CUH891	Metering Muni Load	Power	18	4,361		$ 4,379	$ -	$ -
CUH893	Cherry/Eleanor Pump Upgrade	Power	-	17,012		$ 17,012	$ -	$ -
CUH896	Street Lights	Power	9,294	568,794		$ 578,088	$ -	$ -
CUH899	Canyon Tunnel Penstock	Power	6,210	21,804		$ 28,014	$ -	$ -
CUH915	UG Assessment/Hunters Point	Power	961,755	1,668,663		$ 2,630,418	$ -	$ -
CUH926	Pipe Purchase	Water	-	13,667		$ 13,667	$ 13,667	$ 8,774
CUH931	Microwave Replacement	Joint	3,157,491	156,270		$ 3,313,761	$ 1,491,192	$ 957,346
CUH932	HH SCADA	Joint	-	-		$ -	$ -	$ -
CUH825	Distribution System	Power	446,419	109,797		$ 556,216	$ -	$ -
CUH941	HHP SCADA Security & Control, East/O'Shaugnessy	Joint	1,433,974	246,948		$ 1,680,922	$ 756,415	$ 485,618
CUH942	O'Shaugnessy Dam Discharge Needle Valves	Joint	-	-		$ -	$ -	$ -
CUH943	Renewable Energy	Power	-	-		$ -	$ -	$ -
CUH945	SJPL Crossovers	Water	-	-		$ -	$ -	$ -
CUH946	Facility Maintenance	Joint	-	239		$ 239	$ 108	$ 69
CUH947	Sustainable Energy Account	Power	441,226	1,838,396		$ 2,279,622	$ -	$ -
CUH948	Facility Maintenance - Transmission Lines	Power	70,631	101,295		$ 171,926	$ -	$ -
CUH949	POW Maintenance	Power	-	-		$ -	$ -	$ -
CUH950	HPH/KPH/MPH	Power	1,236,853	1,167,621		$ 2,404,474	$ -	$ -
CUH955	Solar Monitoring	Power	222	-		$ 222	$ -	$ -
CUH956	Facility Maintenance - Gate Valves	Water	275,213	-		$ 275,213	$ 275,213	$ 176,687
CUH957	Moccasin Corrison Control	Joint	48,023	110,986		$ 159,009	$ 71,554	$ 45,938
CUH958	Generation Metering	Power	-	18,811		$ 18,811	$ -	$ -
CUH959	Moccasin Reservoir Water Quality	Water	109,379	-		$ 109,379	$ 109,379	$ 70,221
CUH960	Solar Power Project	Power	6,480	(5,333)		$ 1,147	$ -	$ -
CUH861	MECA Solar	Power	-	26,369		$ 26,369	$ -	$ -
CUH962	SF Electrical Reliability	Power	9,672,565	2,653		$ 9,675,218	$ -	$ -
CUH964	Watershed Lan Purchase	Water	-	75,756		$ 75,756	$ 75,756	$ 48,635
CUH966	MECA - Demand Reduction	Power	-	-		$ -	$ -	$ -
CUH969	SFIA SCADA	Power	-	-		$ -	$ -	$ -
CUH971	Neward - CCSF Tranmission Project	Power	235,120	54,602		$ 289,722	$ -	$ -
CUH972	Load Metering	Power	145,039	1,274		$ 146,313	$ -	$ -
CUH973	Distribution Assessment	Power	-	-		$ -	$ -	$ -
CUH975	Hetch Hetchy Water R&R	Power	-	130,100		$ 130,100	$ -	$ -
CUH975	Hetch Hetchy Water R&R	Water	52,613	516,524		$ 569,137	$ 569,137	$ 365,386
CUH975	Hetch Hetchy Water R&R	Joint	999,854	887,864		$ 1,887,718	$ 849,473	$ 545,362
CUH976	KPH Rewind	Power	1,053,295	1,417,914		$ 2,471,209	$ -	$ -
CUH977	Facilities Maintenance - Water	Joint	770,839	1,049,878		$ 1,820,717	$ 819,323	$ 526,005
CUH978	Community Choice Aggregation	Power	5,571	101,075		$ 106,646	$ -	$ -
CUH979	Hunters Point Distribution	Power	1,926,977	532,011		$ 2,458,988	$ -	$ -
CUH981	Shore Power for Cruise Ships	Power	2,690	-		$ 2,690	$ -	$ -
CUH986	SEA - Energy Efficiency	Power	15,262	-		$ 15,262	$ -	$ -
CUW687	525 Golden Gate	Joint	-	4,105		$ 4,105	$ 1,847	$ 1,186
KUH004	Auto Maintenance	Joint	-	3,882		$ 3,882	$ 1,747	$ 1,122
PUH501	SF Environment Energy/Green Power	Power	-	66,107		$ 66,107	$ -	$ -
PYEAES	Youth Employment	Joint	-	-		$ -	$ -	$ -
	TOTAL HHWP PROJECTS		23,987,888	12,964,974	-	36,952,862	5,807,023	$ 3,728,109
C	TOTAL COMBINED WATER AND HHWP		$ 337,088,405	$ 97,767,548	$379,397,925	$ 55,458,028		$ 15,594,990

Notes

1. 6/30/08 CWIP per FAMIS
2. FY 2008-09 Expenditures posted through 3/20/09 per FAMIS
3. Wholesale share of CWIP 70.1% (see Note 5 Attachment K-1)
4. Water Related HHWP CWIP includes 100% of Water and 45% of Joint
5. Wholesale share of CWIP 64.2% (see Note 5 Attachment K-1)
6. Fund 2A expenditures are funded by Series 2006A bond proceeds, proceeds of commercial paper redeemed from 2006A proceeds and earnings on such proceeds, as applicable.

ATTACHMENT K-3
25 YEAR PAYOFF SCHEDULE FOR EXISITING RATE BASE
WATER ENTERPRISE REGIONAL ASSETS AND ONE DIRECT WHOLESALE ASSET
PRELIMINARY - TO BE SUBSTITUTED WITH FINAL 6/30/09 VALUES
(Section 5.03)

	Water Assets
6/30/09 Wholesale Share of Net Plant & CWIP (Attachment K-1)	338,452,207
Interest Rate:	5.13%
Term:	25
Monthly Principal & Interest Calculation:	2,004,277
Annual Wholesale Revenue Requirement:	24,051,326

Fiscal Yr Ending	Principal	Interest	Annual Payment (Wtr)	Year End Balance
Jun-10	6,848,259	17,203,067	24,051,326	331,603,948
Jun-11	7,207,954	16,843,372	24,051,326	324,395,994
Jun-12	7,586,541	16,464,785	24,051,326	316,809,453
Jun-13	7,985,013	16,066,313	24,051,326	308,824,439
Jun-14	8,404,415	15,646,911	24,051,326	300,420,024
Jun-15	8,845,844	15,205,482	24,051,326	291,574,180
Jun-16	9,310,459	14,740,867	24,051,326	282,263,721
Jun-17	9,799,478	14,251,848	24,051,326	272,464,243
Jun-18	10,314,181	13,737,145	24,051,326	262,150,062
Jun-19	10,855,919	13,195,407	24,051,326	251,294,143
Jun-20	11,426,110	12,625,216	24,051,326	239,868,033
Jun-21	12,026,250	12,025,076	24,051,326	227,841,784
Jun-22	12,657,911	11,393,415	24,051,326	215,183,873
Jun-23	13,322,749	10,728,577	24,051,326	201,861,123
Jun-24	14,022,507	10,028,819	24,051,326	187,838,616
Jun-25	14,759,019	9,292,307	24,051,326	173,079,597
Jun-26	15,534,215	8,517,111	24,051,326	157,545,382
Jun-27	16,350,127	7,701,199	24,051,326	141,195,254
Jun-28	17,208,894	6,842,432	24,051,326	123,986,361
Jun-29	18,112,766	5,938,560	24,051,326	105,873,594
Jun-30	19,064,113	4,987,213	24,051,326	86,809,482
Jun-31	20,065,428	3,985,898	24,051,326	66,744,054
Jun-32	21,119,335	2,931,991	24,051,326	45,624,719
Jun-33	22,228,597	1,822,729	24,051,326	23,396,122
Jun-34	23,396,122	655,204	24,051,326	0
Totals:	338,452,207	262,830,943	601,283,150	

ATTACHMENT K-4
25 YEAR PAYOFF SCHEDULE FOR EXISTING RATE BASE
HETCH HETCHY WATER ASSETS AND WATER-RELATED PORTION OF JOINT ASSETS
PRELIMINARY - TO BE SUBSTITUTED WITH FINAL 6/30/09 VALUES
(Section 5.03)

	Hetch Hetchy
6/30/09 Wholesale Share of Net Plant & CWIP (Attachment K-1)	43,877,206
Interest Rate:	5.13%
Term:	25
Monthly Principal & Interest Calculation:	259,836
Annual Wholesale Revenue Requirement:	3,118,033

Fiscal Yr Ending	Principal	Interest	Annual Payment (HH)	Year End Balance
Jun-10	887,814	2,230,219	**3,118,033**	42,989,393
Jun-11	934,445	2,183,588	**3,118,033**	42,054,948
Jun-12	983,525	2,134,507	**3,118,033**	41,071,423
Jun-13	1,035,183	2,082,849	**3,118,033**	40,036,239
Jun-14	1,089,555	2,028,478	**3,118,033**	38,946,685
Jun-15	1,146,782	1,971,250	**3,118,033**	37,799,903
Jun-16	1,207,015	1,911,017	**3,118,033**	36,592,887
Jun-17	1,270,412	1,847,621	**3,118,033**	35,322,475
Jun-18	1,337,138	1,780,894	**3,118,033**	33,985,337
Jun-19	1,407,370	1,710,663	**3,118,033**	32,577,967
Jun-20	1,481,290	1,636,743	**3,118,033**	31,096,678
Jun-21	1,559,092	1,558,940	**3,118,033**	29,537,585
Jun-22	1,640,981	1,477,051	**3,118,033**	27,896,604
Jun-23	1,727,172	1,390,861	**3,118,033**	26,169,432
Jun-24	1,817,889	1,300,144	**3,118,033**	24,351,544
Jun-25	1,913,371	1,204,662	**3,118,033**	22,438,173
Jun-26	2,013,868	1,104,165	**3,118,033**	20,424,305
Jun-27	2,119,643	998,389	**3,118,033**	18,304,662
Jun-28	2,230,974	887,058	**3,118,033**	16,073,688
Jun-29	2,348,153	769,880	**3,118,033**	13,725,535
Jun-30	2,471,486	646,546	**3,118,033**	11,254,048
Jun-31	2,601,298	516,735	**3,118,033**	8,652,751
Jun-32	2,737,927	380,106	**3,118,033**	5,914,824
Jun-33	2,881,733	236,300	**3,118,033**	3,033,091
Jun-34	3,033,091	84,941	**3,118,033**	0
	43,877,206	34,073,607	77,950,813	

ATTACHMENT K-5
UNEXPENDED APPROPRIATIONS FOR REVENUE-FUNDED REGIONAL ASSETS
CONSTRUCTION WORK IN PROGRESS AS OF MARCH 30, 2009
(Section 5.04)

Project	Project Title	Fund Type	Subfund	Classification	Appropriation	YTD Expenditures	PTD Expenditures	Encumbrances	Available Balances	Notes
				Water Assets						
CUW257	WATERSHED PROTECTION	5W	AAAACP	REGIONAL	1,448,720	29,653	413,529	141,643	893,548	
CUW250	WATERSHED TRAILS&RECREATION IMPRO	5W	AAAACP	REGIONAL	387,639	9,431	112,689	6,675	268,275	
CUW261	REGIONAL WATER STORAGE RNR -BUDGET	5W	AAAACP	REGIONAL	1,750,000	250,970	526,664	26,687	1,196,648	Annual R&R
CUW242	DEMOLITION UNSAFE STRUCTURES	5W	AAAACP	REGIONAL	1,000,000	22,647	407,820	21,524	570,656	
CUW263	CONVEYANCE/TRANSMISSION - BUDGET	5W	AAAACP	REGIONAL	7,826,000	763,603	3,378,543	125,990	4,320,466	Annual R&R
CUW264	WATERSHED ROADS - BUDGET	5W	AAAACP	REGIONAL	3,000,000	77,074	1,391,500	162,401	1,446,099	Annual R&R
CUW262	TREATMENT FACS/WQ IMPROVE-BUDGET	5W	AAAACP	REGIONAL	4,801,000	399,073	2,704,204	349,016	1,747,780	Annual R&R
CUW168	ALAMEDA CREEK FISH RELEASE	5W	AAAACP	REGIONAL	1,537,398	46,624	1,040,919	152,647	343,832	
CUW231	MILLBRAE LAB CAPITAL IMPROVEMENTS	5W	AAAACP	REGIONAL	770,000	19,119	532,135	0	237,865	
CUW227	WATERSHED FENCES/FACILITES	5W	AAAACP	REGIONAL	3,000,000	206,222	2,223,776	581,926	194,298	
CUW253	FACILITIES SECURITY PROJECT	5W	AAAACP	REGIONAL	5,300,000	73,048	4,146,944	113,124	1,039,931	
CUW210	MILLBRAE ADMIN BLDG INTERIM REMODEL	5W	AAAACP	REGIONAL	2,407,700	284,902	1,935,204	160	472,337	
CUW228	WATERSHED ROADS RECONSTRUCTION	5W	AAAACP	REGIONAL	5,170,000	82,992	4,413,061	18,598	738,340	
CUW202	SAN ANTONIO PIPELINE EMERGENCY REPA	5W	AAAACP	REGIONAL	1,400,000	6,012	1,269,190	61,727	69,083	
CUW148	ENVIRONMENTAL & REGULATORY COMP	5W	AAAACP	REGIONAL	3,241,279	0	3,014,995	184,774	41,510	
CUW135	NEW LINE & BYPASS VALVES	5W	AAAACP	REGIONAL	4,829,680	2,103	4,689,067	0	140,613	
CUW143	HETCH HETCHY WATER TREATMENT PLAN	5W	AAAACP	REGIONAL	18,821,529	0	18,452,053	47,947	321,529	
CUW161	TREATMENT FACILITIES IMPROVEMENTS	5W	AAAACP	REGIONAL	15,028,319	334	14,747,873	0	280,446	
CUW241	FACILITIES MAINT SUPPORT STRUCTURES	5W	AAAACP	REGIONAL	5,000,000	8,390	4,988,882	0	11,118	
CUW392	PROGRAM MANAGEMENT SERVICES - WSIF	5W	AAAACP	LOCAL/REGIONAL	1,837,000	(98,519)	751,659	71,973	1,013,366	
CUW127	INST SCADA SYSTEM	5W	AAAACP	LOCAL/REGIONAL	13,156,681	2,481,274	8,653,641	0	4,503,040	
CUW710	OCIP PROJECT CONTROL	5W	AAAACP	LOCAL/REGIONAL	2,497,881	235,706	2,496,959	0	922	
	TOTAL ALL PROJECTS				104,209,826	4,900,661	82,291,307	2,066,813	19,851,706	
	LOCAL PROJECTS			LOCAL	0	0	0	0	0	
	JOINT LOCAL AND REGIONAL PROJECTS			LOCAL/REGIONAL	17,491,562	2,618,462	11,902,259	71,973	5,517,330	
	REGIONAL PROJECTS			REGIONAL	86,718,264	2,282,199	70,389,048	1,994,840	14,334,376	
	TOTAL ALL PROJECTS				104,209,826	4,900,661	82,291,307	2,066,813	19,851,706	
				Hetchy Hetchy Assets						
CUH975	WATER INFRASTRUCTURE - BUDGET	5T	AAAACP	WATER	9,000,000	1,534,488	2,806,592	3,565,023	2,628,385	
CUH964	WATERSHED PROPERTY PURCHASES	5T	AAAACP	WATER	800,000	75,756	454,756	0	345,244	
CUH957	FAC MAINTENANCE-WATER TRANSPORTAT	5T	AAAACP	WATER	3,400,000	110,986	2,885,394	209,138	305,469	
CUH703	PRIEST RESERVOIR DIVERSION CHANNEL	5T	AAAACP	WATER	21,210,344	47,164	20,166,993	0	1,043,351	
CUH926	PIPELINE PURCHASE REPLACEMENT PIPE	5T	AAAACP	WATER	159,860	13,667	157,489	0	2,371	
CUH762	SAN JOAQUIN PIPELINE REPAIRS	5T	AAAACP	WATER	41,469,206	256,011	41,215,761	134,652	118,792	
CUW687	525 GOLDEN GATE	5T	AAAACP	JOINT	280,600	4,105	26,437	0	254,163	
CUH977	FACILITIES MAINTENANCE - BUDGET	5T	AAAACP	JOINT	9,300,000	1,049,878	3,578,478	803,231	4,918,290	
CUH931	HH MICROWAVE REPLACEMENT	5T	AAAACP	JOINT	4,767,000	156,270	3,313,761	1,227,242	225,997	
CUH941	HH SCADA SECURITY & CONTROL, EAST	5T	AAAACP	JOINT	2,068,180	246,948	1,680,922	256,198	131,060	
CUH804	HETCH-HETCHY ROADS REBUILDING	5T	AAAACP	JOINT	4,175,027	341,240	3,544,483	113,314	517,230	
CUH766	HETCHY FACILITIES SECURITY IMPROV.	5T	AAAACP	JOINT	2,086,692	261,601	1,960,386	62,470	63,836	
CUH876	MOCCASIN PHONE SYSTEM	5T	AAAACP	JOINT	1,610,000	15,677	1,528,780	0	81,220	
CUH878	O'SHAUGENESSY DIS.REPAIRS	5T	AAAACP	JOINT	7,179,009	33,750	7,101,644	9,297	68,068	
CUH810	VARIOUS OLD JOB	5T	AAAACP	JOINT	7,613,638	18,690	7,538,034	1,561	74,044	
CUH946	FAC MAINTENANCE-SUPPORT STRUCTURE	5T	AAAACP	JOINT	2,281,454	239	2,273,485	0	7,969	
CUH949	RIGHT OF WAY MAINTENANCE	5T	AAAACP	JOINT	815,000	0	814,208	166	626	
	TOTAL ALL PROJECTS				118,216,010	4,165,470	101,047,602	6,382,292	10,786,117	
	POWER PROJECTS			POWER	0	0	0	0	0	
	WATER PROJECTS			WATER	76,039,410	2,037,072	67,686,985	3,908,812	4,443,613	
	JOINT PROJECTS			JOINT	42,176,600	2,128,397	33,360,617	2,473,480	6,342,504	
	TOTAL ALL PROJECTS				118,216,010	4,165,470	101,047,602	6,382,292	10,786,117	

1891569.2

ATTACHMENT L-1
IDENTIFICATION OF WSIP PROJECTS AS REGIONAL/RETAIL
(Section 5.04)

Project Number		Project Description
REGIONAL		
		San Joaquin Region
CUW373	Regional	San Joaquin Pipeline System Rehabilitation
CUW384	Regional	Tesla Advance Disinfection
CUW387	Regional	Tesla Portal Disinfection
		Sunol Valley Region
CUW352	Regional	Alameda Creek Fishery Enhancement
CUW355	Regional	Stand-by Power - Various Locations
CUW359	Regional	New Irvington Tunnel/Alameda Siphon No. 4
CUW370	Regional	Pipeline Readiness Improvements
CUW374	Regional	Calaveras Dam Replacement
CUW381	Regional	SVWTP 40 mgd Addition
CUW382	Regional	SVWTP Finished Water Reservoir
CUW386	Regional	San Antonio Pump Station Upgrade
		Bay Division Region
CUW353	Regional	Seismic Upgrade BDPL 3 & 4
CUW363	Regional	SCADA Phase II/Security Upgrades
CUW368	Regional	BDPL Reliability Upgrades
CUW380	Regional	BDPL 3 & 4 Crossover
CUW389	Regional	EBMUD Intertie
CUW393	Regional	BDPL 4 Slipline
		Peninsula Region
CUW354	Regional	Lower Crystal Springs Dam Improvement
CUW356	Regional	Crystal Springs Bypass Tunnel
CUW357	Regional	Adit Leak Repairs
CUW361	Regional	Pulgas Balancing Reservoir Rehabilitation and Improvements
CUW365	Regional	Cross Connection Control
CUW366	Regional	HTWTP Short Term Improvemetns
CUW367	Regional	HTWTP Long Term Improvements
CUW369	Regional	Capuchino Valve Lot Improvements
CUW371	Regional	Crystal Springs/San Andreas Transmission
CUW378	Regional	Crystal Springs Pipleine 2 Replacement
CUW379	Regional	San Andreas Pipeline 3 Installation
CUW390	Regional	Desalination
CUW391	Regional	Baden & San Pedro Valve Lots Improvements

ATTACHMENT L-1
IDENTIFICATION OF WSIP PROJECTS AS REGIONAL/RETAIL
(Section 5.04)

Project Number		Project Description
		San Francisco Region
CUW358	Regional	Sunset Reservoir Upgrades - North Basin
CUW372	Regional	University Mound Reservoir Upgrades - North Basin
		System-Wide
CUW388	Regional	PEIR
CUW392	Regional	Program Management Services
CUW394	Regional	Watershed Land Acquisition
RETAIL		
		Reservoirs
CUW307	Local	Summit Reservoir Rehabilitation
CUW310	Local	New Northwest Reservoir
CUW319	Local	Hunters Point Reservoir Rehabilitation
CUW334	Local	Stanford Heights Reservoir Rehabilitation
CUW335	Local	Potrero Heights Reservoir Rehabiliation
CUW337	Local	Sutro Reservoir Rehabilitation
		Pump Stations/Tanks
CUW306	Local	Crocker Amazon Pump Station Upgrade
CUW309	Local	Lake Merced Pump Station Upgrade
CUW314	Local	La Grande Tank Upgrade
CUW318	Local	Forest Hill Tank Rehabilitation
CUW320	Local	Forest Hilll Pump Station Upgrade
CUW321	Local	Forest Knoll Pump Station Upgrade
CUW322	Local	Lincoln Park Pump Station Upgrade
CUW323	Local	Alemany Pump Station Upgrade
CUW324	Local	Mount Davidson Pump Station Upgrade
CUW326	Local	Palo Alto Pump Station Upgrade
CUW326	Local	Sktview-AquaVista Pump Station Upgrade
CUW327	Local	Summit Pump Station Upgrade
CUW328	Local	McLaren #1 Tank Rehabilitation
CUW329	Local	Potrero Heights Tank Seismic Upgrade
CUW330	Local	Forest Knoll Tank Seismic Upgrade
CUW331	Local	Lincoln Park Tank Seismic Upgrade
CUW332	Local	McLaren #2 Tank Rehabilitation
CUW333	Local	Mount Davidson Tank Seismic Upgrade
CUW338	Local	La Grande Pump Station Upgrade
CUW339	Local	Potrero Heights Pump Station Upgrade
CUW340	Local	Vista Francisco Pump Station Upgrade

ATTACHMENT L-1
IDENTIFICATION OF WSIP PROJECTS AS REGIONAL/RETAIL
(Section 5.04)

Project Number		Project Description
		Pipelines/Valves
CUW304	Local	North University Mound System Upgrade
CUW308	Local	Motorize Key Valves
CUW311	Local	Sunset Circulation Improvements
CUW312	Local	Lincoln Way Transmission Line
CUW313	Local	Noe Valley Transmission Main, Phase 2
CUW315	Local	East/West Transmission Main
CUW316	Local	Fulton @ Sixthe Ave Main Replacement
		Water Supply/Water Quality
CUW301	Local	Groundwater
CUW302	Local	Recycled Water
CUW364	Local	Lawrence-Livermore National Laboratory Water Quality Improvements
		Miscellaneous
CUW303	Local	Vehicle Service Facility Upgrade
CUW305	Local	Fire Protection at CCD

03/13/06

$507,815,000
PUBLIC UTILITIES COMMISSION
OF THE CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO WATER REVENUE BONDS, 2006 SERIES A

$110,065,000
PUBLIC UTILITIES COMMISSION
OF THE CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO WATER REVENUE BONDS, 2006 REFUNDING SERIES B

CERTIFICATE REGARDING USE OF PROCEEDS

The undersigned hereby states and certifies as follows:

(i) The undersigned is the General Manager of the Public Utilities Commission of the City and County of San Francisco (the "Commission"), and is authorized to execute this certificate on behalf of the Commission and is knowledgeable with respect to the matters set forth herein.

(ii) On the date hereof, the Commission is issuing the two series of bonds captioned above (the "2006 Series A Bonds," the "2006 Refunding Series B Bonds" and, together, the "Bonds") pursuant to an Amended and Restated Indenture dated as of August 1, 2002 and the First Supplemental Indenture dated as of March 1, 2006 (collectively, the "Indenture"), both by and between the Commission and U.S. Bank National Association, as trustee (the "Trustee").

(iii) The Trustee will transfer and deposit the proceeds of the 2006 Series A Bonds received by the Trustee on the date hereof as follows:

(1) $48,212,528.32 will be deposited in the 2006 Series A Capitalized Interest Account established within the Interest Fund;

(2) $15,958,031.25 will be deposited in the 2006 Series A Reserve Account of the Bond Reserve Fund;

(3) $623,906.09 will be deposited in the 2006 Series A Costs of Issuance Fund;

(4) $120,622,352.19 will be deposited in the 2006 Series A Refunding Fund and transferred pursuant to Irrevocable Refunding Instructions of the Commission dated the date hereof; and

(5) the remaining $338,600,816.86 will be transferred to the Treasurer for deposit to the 2006 Series A Project Fund.

(iv) The proceeds of the 2006 Series A Bonds transferred pursuant to the Irrevocable Refunding Instructions of the Commission will be used to defease and refund the Commission's Commercial Paper Notes (Water Series) on a current basis. The Notes were issued to finance a portion of the facilities described in Exhibit A hereto.

(v) The proceeds of the Bonds deposited in the 2006 Series A Project Fund will be used to finance a portion of the facilities described in Exhibit A hereto.

(vi) The Trustee will transfer and deposit the proceeds of the 2006 Refunding Series B Bonds received by the Trustee on the date hereof as follows:

(1) $192,498.04 will be deposited in the 2006 Refunding Series B Costs of Issuance Fund; and

(2) $111,178,241.95 will be deposited in the 2006 Refunding Series B Refunding Fund.

(vii) The proceeds of the Bonds deposited in the 2006 Refunding Series B Refunding Fund, together with amounts on deposit in the funds and accounts established under the Indenture for the Commission's San Francisco Water Revenue Bonds, 1996 Series A (the "1996 Series A Bonds") and its San Francisco Water Revenue Bonds, 2001 Series A (the "2001 Series A Bonds"), will be used to refund on an advance basis a portion of the outstanding 1996 Series A Bonds and a portion of the outstanding 2001 Series A Bonds. The portion of the 1996 Series A Bonds being refunded were issued to finance the facilities (the "1996 Project") described in Exhibit B hereto, and the portion of the 2001 Series A Bonds being refunded were used to finance the facilities (the "2001 Project") described in Exhibit B hereto.

(viii) Exhibit C hereto attached describes (A) each use to be made by any person of the Project, the 1996 Project and the 2001 Project other than use by the Commission and other non-federal governmental units and other than use by members of the public generally, and (B) payments (if any) directly or indirectly in respect of such use which are to be made after the date hereof;

(ix) Other than as set forth in Exhibit A and Exhibit B, no portion of the proceeds of the Bonds will be used, directly or indirectly, to make or finance a loan to any person (other than a State or local government unit) or to acquire property which will be sold or leased to any person (other than a State or local government unit) on an installment a sale basis except as referenced in Exhibit C.

(x) The Commission expects to use the Project for the purposes referenced and discussed in Exhibit A, Exhibit B, Exhibit C and Exhibit D or for other governmental purposes of the Commission during the entire term of the Bonds.

(xi) Set forth on Exhibit D is the Commission's methodology for determining governmental use and private use with respect to the water enterprise.

(xii) To the best knowledge of the undersigned, the above statements are reasonable and there are no other facts, estimates or circumstances, other than those set forth herein, that would materially affect the statements made herein.

Capitalized terms used but not defined herein have the meanings set forth in the Indenture.

IN WITNESS WHEREOF, I have hereunto set my name this 15th day of March, 2006.

PUBLIC UTILITIES COMMISSION OF THE
CITY AND COUNTY OF SAN FRANCISCO

By: _____
General Manager

ATTACHMENT L-2 (CONTINUED)
WATER ENTERPRISE REVENUE BOND 2006 SERIES A
SUMMARY OF SOURCES AND USES OF FUNDS
(Section 5.04)

Source: Closing Documents (Certificate Regarding Use of Proceeds)

Proceeds		
Principal	507,815,000.00	
Plus Premium	19,109,138.35	
Minus Underwriter's Discount	(932,940.06)	
Minus Insurance	(1,973,563.58)	
Net Proceeds	524,017,634.71	
Use of Proceeds		
Capitalized Interest Fund	48,212,528.32	
Bond Reserve Fund	15,958,031.25	
Insurance Fund	623,906.09	
Series A Refunding Fund	120,622,352.19	459,223,169.05
Series A Project Fund	338,600,816.86	
Total Uses	524,017,634.71	

	Commercial Paper	Project Fund	Total
Hetch Hetchy			
Tesla Portal Disinfection	251,262.58	1,147,302.42	1,398,565.00
Advance Disinfection	429,714.76	5,611,554.24	6,041,269.00
SJPL	4,737,937.28	17,784,667.72	22,522,605.00
Total Hetch Hetchy	5,418,914.62	24,543,524.38	29,962,439.00
SF Regional			
University Mound - North	55,728.10	5,964,279.90	6,020,008.00
Sunset - North	7,525,896.84	28,782,094.16	36,307,991.00
Groundwater	3,400,973.67	2,963,110.33	6,364,084.00
Recycled Water	1,548,036.76	11,316,958.24	12,864,995.00
Total SF Regiona1	12,530,635.37	49,026,442.63	61,557,078.00
SF Local	45,405,787.71	106,407,313.30	151,813,101.01
Sunol Valley Subregional			
Calaveras Dam	9,065,945.51	15,993,818.49	25,059,764.00
Stand-by Power	556,398.67	1,207,319.33	1,763,718.00
Pipeline Readiness	649,566.31	4,942,205.69	5,591,772.00
SAPS Upgrade	213,423.44	1,748,134.56	1,961,558.00
SVWTP Finished Water Res	3,317,203.82	7,838,383.18	11,155,587.00
Irvington Tunnel	4,084,139.65	18,247,176.35	22,331,316.00
Alameda Creek Fishery	656,765.00	1,327,119.00	1,983,884.00
SVWTP 40 mgd Addition	25,378.75	3,474,585.25	3,499,964.00
Total Sunol Valley Subregional	18,568,821.15	54,778,741.85	73,347,563.00

ATTACHMENT L-2 (CONTINUED)
WATER ENTERPRISE REVENUE BOND 2006 SERIES A
SUMMARY OF SOURCES AND USES OF FUNDS
(Section 5.04)

Miscellaneous				
PEIR	3,204,177.44	5,103,872.56	8,308,050.00	
PPPCMS Services	2,964,786.31	10,358,811.69	13,323,598.00	
Watershed Land Acquisition	-	502,660.00	502,660.00	
Total Miscellaneous	6,168,963.75	15,965,344.25	22,134,308.00	
LLNL	133,156.60	282,702.40	415,859.00	
Bay Division Subregional				
Seismic Upgrade BDPL 3 & 4	4,758,306.54	16,481,539.46	21,239,846.00	
BDPL Reliability	4,360,664.44	40,874,800.56	45,235,465.00	
BDPL 3 & 4 Crossover	802,494.94	493,817.06	1,296,312.00	
SCADA Phase II	65,497.37	1,247,963.63	1,313,461.00	
EBMUD Intertie	6,668,906.37	4,075,015.63	10,743,922.00	
BDPL 4 Slipline	-	1,219,251.00	1,219,251.00	
Total Bay Division Subregional	16,655,869.66	64,392,387.34	81,048,257.00	
Peninsula Subregional				
Capuchino Valve Lot	162,584.69	753,779.31	916,364.00	
CS/SA Transmission	2,288,853.10	3,448,975.90	5,737,829.00	
Adit Leak Repair	255,334.99	1,650,368.01	1,905,703.00	
HTWTP Short Term	2,874,763.69	3,582,860.31	6,457,624.00	
Cross Connection Control	1,150,559.48	324,549.52	1,475,109.00	
CS Bypass Tunnel	2,873,475.22	15,532,584.78	18,406,060.00	
LCS Dam Improvement	931,587.07	3,278,932.93	4,210,520.00	
Pulgas Balancing Reservoir	1,218,341.39	2,706,284.61	3,924,626.00	
HTWTP Long Term	1,107,185.77	2,549,793.23	3,656,979.00	
Baden & San Pedro Valve Lots	60,203.48	2,963,540.52	3,023,744.00	
Total Peninsula Subregional	12,922,888.88	36,791,669.12	49,714,558.00	
San Francisco Subregional				
CSPL 2 Replacement	1,269,111.95	5,019,824.05	6,288,936.00	
SAPL 3	1,492,584.40	1,942,479.60	3,435,064.00	
Desalination	55,618.10	596,473.90	652,092.00	
Total San Francisco Subregional	2,817,314.45	7,558,777.55	10,376,092.00	
Grand Total	120,622,352.19	359,746,902.82	480,369,255.01	
Regional			328,140,295.00	68.31%
Local			152,228,960.01	31.69%
			480,369,255.01	

This certificate is for illustration only. It was prepared in 2006 and shown groundwater and recycled water projects as regional instead of local. In addition, it does not reflect expenditures for the portions of regional assets which in rate base as of June 30, 2008 nor what is expected to be added to rate base through June 30, 2009. For these reasons, the percentages shown for regional and local projects are not accurate.

ATTACHMENT L-3
WATER ENTERPRISE REVENUE BOND 2006 SERIES A
ANNUAL REPORT ON EXPENDITURES OF AND EARNINGS ON PROCEEDS
AS OF JUNE 30, 2009
(Section 5.04 A)

Project Number		Project Description	Net Financing Proceeds[1]	Appropriated Interest Earnings[2]	Adjusted Project Funding	Expenditures Thru 6/30/09[3]	Remaining Balance
REGIONAL PROGRAM							
		San Joaquin Region					
CUW373	Regional	San Joaquin Pipeline System Rehabilitation	1,398,565				
CUW384	Regional	Tesla Advance Disinfection	6,041,269				
CUW387	Regional	Tesla Portal Disinfection	22,522,605				
		Total San Joaquin Region	29,962,439				
		Sunol Valley Region					
CUW352	Regional	Alameda Creek Fishery Enhancement	1,983,684				
CUW355	Regional	Stand-by Power - Various Locations	1,763,718				
CUW359	Regional	New Irvington Tunnel/Alameda Siphon No. 4	22,331,316				
CUW370	Regional	Pipeline Readiness Improvements	5,591,772				
CUW374	Regional	Calaveras Dam Replacement	25,059,764				
CUW381	Regional	SVWTP 40 mgd Addition	3,499,964				
CUW382	Regional	SVWTP Finished Water Reservoir	11,155,587				
CUW386	Regional	San Antonio Pump Station Upgrade	1,961,558				
		Total Sunol Valley Region	73,347,563				
		Bay Division Region					
CUW353	Regional	Seismic Upgrade BDPL 3 & 4	21,234,846				
CUW363	Regional	SCADA Phase II/Security Upgrades	1,313,461				
CUW368	Regional	BDPL Reliability Upgrades	45,235,465				
CUW380	Regional	BDPL 3 & 4 Crossover	21,239,846				
CUW389	Regional	EBMUD Intertie	10,743,922				
CUW393	Regional	BDPL 4 Slipline	1,219,251				
		Total Bay Division Region	100,986,791				
		Peninsula Region					
CUW354	Regional	Lower Crystal Springs Dam Improvement	4,219,520				
CUW356	Regional	Crystal Springs Bypass Tunnel	19,466,050				
CUW357	Regional	Adit Leak Repairs	1,905,703				
CUW361	Regional	Pulgas Balancing Reservoir Rehabilitation and Improvements	3,924,626				
CUW365	Regional	Cross Connection Control	1,475,109				
CUW366	Regional	HTWTP Short Term Improvemetns	6,457,624				
CUW367	Regional	HTWTP Long Term Improvements	3,656,979				
CUW369	Regional	Capuchino Valve Lot Improvements	916,364				
CUW371	Regional	Crystal Springs/San Andreas Transmission	5,737,829				
CUW376	Regional	Crystal Springs Pipleine 2 Replacement	6,288,936				
CUW379	Regional	San Andreas Pipeline 3 Installation	3,435,064				
CUW390	Regional	Desalination	652,092				
CUW391	Regional	Baden & San Pedro Valve Lot Improvements	3,023,744				
		Total Peninsula Region	60,090,650				
		San Francisco Region					
CUW358	Regional	Sunset Reservoir Upgrades - North Basin	6,020,008				
CUW372	Regional	University Mound Reservoir Upgrades - North Basin	36,307,991				
		Total San Francisco Region	42,327,999				
		System-Wide					
CUW388	Regional	PEIR	8,308,050				
CUW392	Regional	Program Management Services	13,323,598				
CUW394	Regional	Watershed Land Acquisition	502,660				
		Total System-Wide	22,134,308				
		Total Regional Program	328,849,750				
LOCAL PROGRAM							
		Reservoirs					
CUW307	Local	Summit Reservoir Rehabilitation					
CUW310	Local	New Northwest Reservoir					
CUW319	Local	Hunters Point Reservoir Rehabilitation					
CUW334	Local	Stanford Heights Reservoir Rehabilitation					
CUW335	Local	Potrero Heights Reservoir Rehabilitation					
CUW337	Local	Sutro Reservoir Rehabilitation					
		Total Reservoirs					
		Pump Stations/Tanks					
CUW306	Local	Crocker Amazon Pump Station Upgrade					
CUW309	Local	Lake Merced Pump Station Upgrade					
CUW314	Local	La Grande Tank Upgrade					
CUW318	Local	Forest Hill Tank Rehabilitation					
CUW320	Local	Forest Hill Pump Station Upgrade					
CUW321	Local	Forest Knoll Pump Station Upgrade					
CUW322	Local	Lincoln Park Pump Station Upgrade					
CUW323	Local	Alemany Pump Station Upgrade					
CUW324	Local	Mount Davidson Pump Station Upgrade					

ILLUSTRATIVE ONLY DRAFT

WATER ENTERPRISE REVENUE BOND 2006 SERIES A
ANNUAL REPORT ON EXPENDITURES OF AND EARNINGS ON PROCEEDS
AS OF JUNE 30, 2009
(Section 5.04 A)

Project Number		Project Description	Net Financing Proceeds[1]	Appropriated Interest Earnings[2]	Adjusted Project Funding	Expenditures Thru 6/30/09[3]	Remaining Balance
CUW325	Local	Palo Alto Pump Station Upgrade					
CUW326	Local	Skyview-AquaVista Pump Station Upgrade					
CUW327	Local	Summit Pump Station Upgrade					
CUW328	Local	McLaren #1 Tank Rehabilitation					
CUW329	Local	Potrero Heights Tank Seismic Upgrade					
CUW330	Local	Forest Knoll Tank Seismic Upgrade					
CUW331	Local	Lincoln Park Tank Seismic Upgrade					
CUW332	Local	McLaren #2 Tank Rehabilitation					
CUW333	Local	Mount Davidson Tank Seismic Upgrade					
CUW338	Local	La Grande Pump Station Upgrade					
CUW339	Local	Potrero Heights Pump Station Upgrade					
CUW340	Local	Vista Francisco Pump Station Upgrade					
		Total Pump Stations/Tanks					
		Pipelines/Valves					
CUW304	Local	North University Mound System Upgrade					
CUW308	Local	Motorize Key Valves					
CUW311	Local	Sunset Circulation Improvements					
CUW312	Local	Lincoln Way Transmission Line					
CUW313	Local	Noe Valley Transmission Main, Phase 2					
CUW315	Local	East/West Transmission Main					
CUW316	Local	Fulton @ Sixth Ave Main Replacement					
		TtoalPipelines/Valves					
		Water Supply/Water Quality					
CUW301	Local	Groundwater					
CUW302	Local	Recycled Water					
CUW364	Local	Lawrence-Livermore National Laboratory Water Quality Improvements					
		Total Water Supply/Water Quality					
		Miscellaneous					
CUW303	Local	Vehicle Service Facility Upgrade					
CUW305	Local	Fire Protection at CCD					
		Total Miscellaneous					
		Total Local Program					
		Grand Total Regional and Local Programs					
		Unappropriated Interest Earnings					
		Percent of Net Proceeds[4]					
		Percent of Net Proceeds and Earnings[4]					

[1]Net financing proceeds available on date of issue (i.e. deposit to project fund)
[2]Cumulative net of arbitrage rebate liability
[3]Cumulative
[4]If financing sources Substantially Expended, proceed allocations are then fixed

ILLUSTRATION ONLY DRAFT

REVENUE-FUNDED CAPITAL ADDITIONS (Section 5.04.B)
Subfund: 5W CPF WCF - Wholesale Customer Capital Fund (Water)

Projected FAMIS as of July 1, 2009 (Day 1 of New Budget Year)

Based on Proportionate Annual Water Deliveries of ... 68.7%

		A	B	C	D	E	F	G=C-D-F	H	I=G-H
			Wholesale Customer Capital Fund (5W CPF WCF)							
Project	Title	FY 2009-10 Approved Budget* - Total Regional	FY 2009-10 Approved Budget - WHOLESALE SHARE	Total Appropriation - All Years^	All Years Actual Expenditures^	Fiscal Year 2009-10 Actual Expenditures^	Encumbered But Not Expended^	Appropriated, Unencumbered Balance^	Projected Expended & Encumbered through 6/30/2010	Projected Surplus / (Shortfall)
CUW262	Regional Water RnR - Treatment Facilities	$ 1,000,000	$ 687,000	$ 687,000	$ -	$ -	$ -	$ 687,000	$ 229,000	$ 458,000
CUW263	Regional Water RnR - Conveyance/Transmission Systems	$ 7,000,000	$ 4,809,000	$ 4,809,000	$ -	$ -	$ -	$ 4,809,000	$ 1,603,000	$ 3,206,000
CUW264	Regional Water - Watersheds / ROW Management	$ 500,000	$ 343,500	$ 343,500	$ -	$ -	$ -	$ 343,500	$ 114,000	$ 229,500
FUW100	Regional Water - Facilities Maintenance	$ 3,700,000	$ 2,541,900	$ 2,541,900	$ -	$ -	$ -	$ 2,541,900	$ 847,000	$ 1,694,900
CUW261	Regional Water - Storage									
	Regional Total	$ 12,200,000	$ 8,381,400	$ 8,381,400	$ -	$ -	$ -	$ 8,381,400	$ 2,793,000	$ 5,588,400

Source: * SFPUC Commission Approved Budget, February 2009, Same Format
^ FAMIS - City's Official Financial System of Record

Ties to Budget Hearing Materials

REVENUE-FUNDED CAPITAL ADDITIONS (Section 5.04.B)
Subfund: 5W CPF WCF - Wholesale Customer Capital Fund (Water)

Projected FAMIS as of June 30, 2010 (Last Day of Budget Year)

Based on Proportionate Annual Water Deliveries of ... 68.7%

			Wholesale Customer Capital Fund (5W CPF WCF)							
Project	Title	FY 2009-10 Approved Budget* - Total Regional	FY 2009-10 Approved Budget - WHOLESALE SHARE	Total Appropriation - All Years^	All Years Actual Expenditures^	Fiscal Year 2009-10 Actual Expenditures^	Encumbered But Not Expended^	Appropriated, Unencumbered Balance^	Projected Expended & Encumbered through 6/30/2011	Projected Surplus / (Shortfall)
CUW262	Regional Water RnR - Treatment Facilities	$ 1,000,000	$ 687,000	$ 687,000	$ 235,000	$ 235,000	$ -	$ 452,000	$ 409,000	$ 43,000
CUW263	Regional Water RnR - Conveyance/Transmission Systems	$ 7,000,000	$ 4,809,000	$ 4,809,000	$ 1,395,000	$ 1,395,000	$ 25,000	$ 3,389,000	$ 1,589,000	$ 1,800,000
CUW264	Regional Water - Watersheds / ROW Management	$ 500,000	$ 343,500	$ 343,500	$ 115,000	$ 115,000	$ 50,000	$ 178,500	$ 35,500	$ 143,000
FUW100	Regional Water - Facilities Maintenance	$ 3,700,000	$ 2,541,900	$ 2,541,900	$ 850,000	$ 850,000	$ 123,000	$ 1,568,900	$ 768,900	$ 800,000
CUW261	Regional Water - Storage	$ -	$ -							
	Regional Total	$ 12,200,000	$ 8,381,400	$ 8,381,400	$ 2,595,000	$ 2,595,000	$ 198,000	$ 5,588,400	$ 2,802,400	$ 2,786,000

Source: * SFPUC Commission Approved Budget, February 2009, Same Format
^ FAMIS - City's Official Financial System of Record

Ties to Budget Hearing Materials
Shown on Attachment N-2, Schedule 3

Shown On Attachment N-2, Schedule 3
Revenue Capital - Actual Expenditures

Shown on Attachement N-2, Schedule 3
Continuing Appropriation
Needed for Mulit-Year
Revenue Funded Capital

REVENUE-FUNDED CAPTIAL ADDITIONS (Section 5.04.B)
Subfund: 5T CPF WCF - Wholesale Customer Capital Fund (Hetch Hetchy)

Projected FAMIS as of July 1, 2009 (Day 1 of New Budget Year)

Based on Proportionate Annual Water Deliveries of ...

		A		B	C	D	E	F	G=C-D-E-F	H	I=G-H
				68.1%	Wholesale Customer Capital Fund (5W CPF WCF)						
Project	Title	FY 2009-10 Approved Budget* - Total Regional		FY 2009-10 Approved Budget - WHOLESALE SHARE	Total Appropriation - All Years^	All Years Actual Expenditures^	Fiscal Year 2009-10 Actual Expenditures^	Encumbered But Not Expended^	Appropriated, Unencumbered Balance^	Projected Expended & Encumbered through 6/30/2010	Projected Surplus / (Shortfall)
CUH931	HH Microwave Replacement	$ 4,000,000	J	$ 1,224,900	$ 1,224,900	$ -	$ -	$ -	$ 1,224,900	$ 408,000	$ 816,900
CUH977	HH Water R&R - Facilities Maintenance	$ 3,500,000	J	$ 1,071,788	$ 1,071,788	$ -	$ -	$ -	$ 1,071,788	$ 357,000	$ 714,788
CUH947	SEA - Go Solar Incentive Porject	$ 4,000,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH971	Alternative Transmission Studies	$ 1,000,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH976	HH Water R&R - Power Infrastructure	$ 16,700,000	P	$ -	$ -					$ -	
CUH979	Hunters Point Municipal Power	$ -	P	$ -	$ -					$ -	
CUH983	Civic Center Sustainability District	$ 1,090,000	P	$ -	$ -					$ -	
CUH986	General Fund Dept - Energy Efficiency	$ 7,365,158	P	$ -	$ -					$ -	
	Renewable/Generation	$ 3,501,307	P	$ -	$ -					$ -	
	Treasure Island Improvement Project	$ 2,700,000	P	$ -	$ -					$ -	
	Enterprise Fund Dept - Energy Efficiency	$ 325,722	P	$ -	$ -					$ -	
CUH975	HH Water R&R - Water Infrastructure	$ 6,000,000	W	$ 4,083,000	$ 4,083,000					$ -	
	Tuolumne River Watershed Protection	$ 2,000,000	W	$ 1,361,000	$ 1,361,000					$ 1,361,000	
										$ 454,000	
	Regional Total	$ 52,182,187		$ 7,740,688	$ 7,740,688	$ -	$ -	$ -	$ 2,296,688	$ 2,580,000	$ 1,531,688

Source: * SFPUC Commission Approved Budget, February 2009, Same Format
^ FAMIS - City's Official Financial System of Record

Ties to Budget Hearing Materials

REVENUE-FUNDED CAPTIAL ADDITIONS (Section 5.04.B)
Subfund: 5T CPF WCF - Wholesale Customer Capital Fund (Hetch Hetchy)

Projected FAMIS as of June 30, 2010 (Last Day of Budget Year)

Based on Proportionate Annual Water Deliveries of ...

					Wholesale Customer Capital Fund (5W CPF WCF)						
				68.1%							
Project	Title	FY 2009-10 Approved Budget* - Total Regional		FY 2009-10 Approved Budget - WHOLESALE SHARE	Total Appropriation - All Years^	All Years Actual Expenditures^	Fiscal Year 2009-10 Actual Expenditures^	Encumbered But Not Expended^	Appropriated, Unencumbered Balance^	Projected Expended & Encumbered through 6/30/2011	Projected Surplus / (Shortfall)
CUH931	HH Microwave Replacement	$ 4,000,000	J	$ 1,224,900	$ 1,224,900	$ 1,224,900	$ 1,224,900	$ -	$ -	$ -	$ -
CUH977	HH Water R&R - Facilities Maintenance	$ 3,500,000	J	$ 1,071,788	$ 1,071,788	$ 1,071,788	$ 1,071,788	$ -	$ (1)	$ (1)	$ -
CUH947	SEA - Go Solar Incentive Porject	$ 4,000,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH971	Alternative Transmission Studies	$ 1,000,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH976	HH Water R&R - Power Infrastructure	$ 16,700,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH979	Hunters Point Municipal Power	$ -	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH983	Civic Center Sustainability District	$ 1,090,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH986	General Fund Dept - Energy Efficiency	$ 7,365,158	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Renewable/Generation	$ 3,501,307	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Treasure Island Improvement Project	$ 2,700,000	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Enterprise Fund Dept - Energy Efficiency	$ 325,722	P	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
CUH975	HH Water R&R - Water Infrastructure	$ 6,000,000	W	$ 4,083,000	$ 4,083,000	$ 4,083,000	$ 4,083,000	$ -	$ -	$ -	$ -
	Tuolumne River Watershed Protection	$ 2,000,000	W	$ 1,361,000	$ 1,361,000	$ 1,361,000	$ 1,361,000	$ -	$ -	$ -	$ -
	Regional Total	$ 52,182,187		$ 7,740,688	$ 7,740,688	$ 7,740,688	$ 7,740,688	$ -	$ (1)	$ (1)	$ -

Source: * SFPUC Commission Approved Budget, February 2009, Same Format
^ FAMIS - City's Official Financial System of Record

Ties to Budget Hearing Materials
Shown on Attachment N-2, Schedule 6

Shown On Attachment N-2, Schedule 6
Revenue Capital - Actual Expenditures

Show on Attachment N-2, Schedule 6
Continuing Appropriation
Needed for Mulit-Year
Revenue Funded Capital

ATTACHMENT M-2

REVENUE FUNDED CAPITAL
ANNUAL REPORTING REQUIREMENTS
(Section 5.04B)

Part A. Updated Actual Information Through Most Recent Fiscal Year (Due in November)

Each year, the SFPUC will provide a report on the status of the regional revenue funded projects with the following information:

Project-level information (through close-out)

1 Scope of project
2 Current cost estimate/budget.
3 Expected milestone dates (ie, design, environmental, construction period, close-out, etc.)
4 Contract status
5 Reasons for status changes from prior report.
6 Other information relevant to whether project is on time/on budget.
7 For most recently completed fiscal year and estimated for current year:
8 Total expenditures (capital and operating); amounts paid from other sources.
9 Amount of encumbered and unencumbered appropriations
10 Application of any unused appropriations

Wholesale Capital Fund

11 Beginning balance, deposits, capital expenditures (by project), earnings, ending balance.
12 Components of ending balance; wholesale portion of:
13 Appropriated and encumbered
14 Appropriated but unencumbered

Part B. Proposed Appropriations for Upcoming Year (Due in March)

15 Project information, to the extent not provided in Part A
16 Expected funding needs for regional projects
17 Unused or excess appropropriations carried over.
18 Proposed appropriation for upcoming fiscal year.

ATTACHMENT M-3
WHOLESALE REVENUE-FUNDED CAPITAL FUND - BALANCING ACCOUNT ADJUSTMENT
** EXAMPLE REPORTING FORMAT **
(Section 6.08)

	(1)	(2)	(3)	(4)	(5)	(1)	(2)	(3)	(4)	(5)	(1)
	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
a. Beginning balance	$0	$5,671,414	$8,960,834	$9,669,194	$10,420,781	$11,217,991	$5,498,801	$6,198,022	$6,944,933	$7,742,299	$8,593,037
b. Transfer to Balancing Account	$0					($6,467,533)					($2,574,995)
Year 1											
c. Budgeted appropriation	$8,381,400					$10,697,026					$13,652,417
d. Encumbrance/Expenditure	($2,793,800)	($2,793,800)	($2,793,800)			($3,565,675)	($3,565,675)	($3,565,675)			($4,550,806)
Year 2											
e. Budgeted appropriation		$8,800,470					$11,231,878				
f. Encumbrance/Expenditure		($2,933,490)	($2,933,490)	($2,933,490)			($3,743,959)	($3,743,959)	($3,743,959)		
Year 3											
g. Budgeted appropriation			$9,240,494					$11,793,471			
h. Encumbrance/Expenditure			($3,080,165)	($3,080,165)	($3,080,165)			($3,931,157)	($3,931,157)	($3,931,157)	
Year 4											
i. Budgeted appropriation				$9,702,518					$12,383,145		
j. Encumbrance/Expenditure				($3,234,173)	($3,234,173)	($3,234,173)			($4,127,715)	($4,127,715)	($4,127,715)
Year 5											
k. Budgeted appropriation					$10,187,644					$13,002,302	
l. Encumbrance/Expenditure					($3,395,881)	($3,395,881)	($3,395,881)			($4,334,101)	($4,334,101)
m. Subtotal	$5,587,600	$8,744,594	$9,393,873	$10,123,885	$10,898,206	$5,251,755	$6,025,163	$6,750,702	$7,525,246	$8,351,628	$6,657,838
n. Interest earnings (e.g., 3%)	$83,814	$216,240	$275,321	$296,896	$319,785	$247,046	$172,859	$194,231	$217,053	$241,409	$228,763
o. Ending fund balance (unencumbered, unexpende	$5,671,414	$8,960,834	$9,669,194	$10,420,781	$11,217,991	$5,498,801	$6,198,022	$6,944,933	$7,742,299	$8,593,037	$6,886,601
p. Five Year Cumulative Appropriations w/ interest					$47,504,581					$60,180,421	
q. 10% of Cumulative Appropriations w/ interest					$4,750,458					$6,018,042	
r. Ending fund balance					$11,217,991					$8,593,037	
s. Excess balance transferred to Balancing Account*					($6,467,533)					($2,574,995)	

*Test: Any balance in excess of 10% of the cumulative five-year appropriation total is credited to the balancing account.

BALANCING ACCOUNT / RATE SETTING CALCULATION
REFERENCE SECTION 6.03.A.3.a

	FY 2007-08	FY 2008-09	FY 2009-10
Step 1:			
A. Balancing Account as of June 30, 2007	$12,882,000		
B. Interest on Balancing Account at Pooled Investment Rate for Fiscal Year	$554,000		
C. Wholesale Revenues for Fiscal Year	($113,932,000)		
D. Wholesale Revenue Requirement for Fiscal Year	$119,224,000		
E. Settlement Credits or Other Adjustments	$2,448,614		
F. 1984 Agreement Balancing Account Credits	$0		
G. Balancing Account as of June 30, 2008	$21,176,614		
Step 2:			
A. Balancing Account as of June 30, 2008		$21,176,614	
B. Interest on Balancing Account at Pooled Investment Rate for Fiscal Year		$529,000	
C. Wholesale Revenues for Fiscal Year		-$123,604,000	
D. Wholesale Revenue Requirement for Fiscal Year		$120,562,000	
E. Settlement Credits or Other Adjustments		$21,000	
F. 1984 Agreement Balancing Account Credits		$0	
G. Balancing Account as of June 30, 2009		$18,684,614	
Step 3:			
A. Balancing Account as of June 30, 2009			$0
B. Interest on Balancing Account at Pooled Investment Rate for Fiscal Year			$0
C. Wholesale Revenues for Fiscal Year			-$127,485,900
D. Wholesale Revenue Requirement for Fiscal Year			$140,994,733
E. Settlement Credits or Other Adjustments			$21,000
F. 1984 Agreement Balancing Account Credits			$1,997,220
G. Balancing Account as of June 30, 2010			$15,527,053
H. Net Change in Wholesale Revenue Coverage			$4,488,233
I. Total Revenue Deficiency or Surplus			$20,015,286
J. Projected Water Sales in Ccf	84,621,240	83,205,600	85,920,000
K. Deficiency or (Surplus) $/Ccf			$0.23
L. Deficiency or (Surplus) Ccf as a Percentage of Revenues			15.7%

ILLUSTRATION ONLY DRAFT

Note: Dollar amounts are for illustrative purposes only. The Parties have not agreed on the amount of the balancing account as of June 30, 2007, revenue requirement for FY 2007-08, settlement credits for FY 2007-08, and the amount of the balancing account as of June 30, 2009.

BALANCING ACCOUNT / RATE SETTING CALCULATION
METHOD OF CALCULATION
REFERENCE SECTION 6.03.A.3.a

N = The year for which rates are being set

N-1 = The current year

N-2 = The most recently completed year for which actual results are available

Calculation Method:

Step 1 Determine the actual revenue differential for year N-2
- A. Enter the beginning amount of the Balancing Account
- B. Calculate the interest earned at the Pooled Investment Account Rate for (A)
- C. Enter the actual Wholesale revenues billed
- D. Enter the Wholesale Revenue Requirement
- E. Enter settlement credits or adjustments, if any
- F. Enter carry-over 1984 Agreement credits owed the City, if any
- G. Calculate the ending amount of the Balancing Account

Step 2 Determine the projected revenue differential for year N-1
- A. Enter the beginning amount of the Balancing Account; this is the same amount as G in Step 1
- B. Calculate the interest earned at the Pooled Investment Account Rate for (A)
- C. Enter the actual Wholesale revenues billed
- D. Enter the Wholesale Revenue Requirement
- E. Enter settlement credits or adjustments, if any
- F. Enter carry-over 1984 Agreement credits owed the City, if any
- G. Calculate the ending amount of the Balancing Account

Step 3 Determine the projected revenue differential for year N
- A. Enter the beginning amount of the Balancing Account; this is the same amount as G in Step 2
- B. Calculate the interest earned at the Pooled Investment Account Rate for (A)
- C. Enter the actual Wholesale revenues billed
- D. Enter the Wholesale Revenue Requirement
- E. Enter settlement credits or adjustments, if any
- F. Enter carry-over 1984 Agreement credits owed the City, if any
- G. Calculate the ending amount of the Balancing Account
- H. Enter the net change in the Wholesale Revenue Coverage, if applicable
- I. Calculate the total revenue deficiency or surplus (G) + (H)
- J. Enter the projected water sales to Wholesale Customers in Ccf
- K. Calculate the required increase in the commodity portion of the rate by dividing (I) by (J)
- L. Calculate the required increase in revenues by dividing (I) by (C)

WHOLESALE REVENUE REQUIREMENT SCHEDULES
CALCULATION OF WHOLESALE REVENUE REQUIREMENT
FISCAL YEAR 2009-10
REFERENCE ARTICLE 5

ATTACHMENT N-2
SCHEDULE 1

EXPENSE CATEGORY	CONTRACT REFERENCE	SCHEDULE REFERENCE	TOTAL	DIRECT RETAIL	DIRECT WHOLESALE	REGIONAL	JOINT EXPENSE ALLOCATION FACTOR	WHOLESALE SHARE
OPERATING AND MAINTENANCE EXPENSE:								
SOURCE OF SUPPLY	5.05 (A)	SCH 8.1	$ 14,943,953	$ 1,251,062	$ -	$ 13,692,891	ANNUAL USE[1]	$ 9,364,568
PUMPING	5.05 (B)	SCH 8.1	$ 4,342,682	$ 3,854,000	$ -	$ 488,682	ANNUAL USE[1]	$ 334,210
TREATMENT	5.05 (C)	SCH 8.1	$ 30,445,053	$ -	$ -	$ 30,445,053	ANNUAL USE[1]	$ 20,821,372
TRANSMISSION & DISTRIBUTION	5.05 (D)	SCH 8.1	$ 53,416,232	$ 30,163,286	$ -	$ 23,252,946	ANNUAL USE[1]	$ 15,902,690
CUSTOMER ACCOUNTS[2]	5.05 (E)	SCH 8.1	$ 7,552,213	$ 7,401,169	$ 151,044	$ -	2%	$ 151,044
TOTAL O&M			$ 110,700,133	$ 42,669,517	$ 151,044	$ 67,879,572		46,573,883
COMPOSITE % (WHOLESALE SHARE / TOTAL O&M)	5.06 (C)							42.07%
ADMINISTRATIVE AND GENERAL EXPENSES:								
COWCAP	5.06 (A)	SCH 8.1	$ 1,238,009	$ -	$ -	$ 1,238,009	COMPOSITE O&M	$ 520,857
SERVICES OF SFPUC BUREAUS	5.06 (B)	SCH 7	$ 22,465,291	$ 8,178,424	$ -	$ 14,286,867	ANNUAL USE[1]	$ 9,770,788
OTHER A&G	5.06 (C)	SCH 8.1	$ 12,972,477	$ 4,009,891	$ -	$ 8,962,586	COMPOSITE O&M	$ 3,770,749
COMPLIANCE AUDIT	5.06 (D)	SCH 8.1	$ 200,000	$ -	$ -	$ 200,000	50%	$ 100,000
TOTAL A&G			$ 36,875,777	$ 12,188,315	$ -	$ 24,687,462		$ 14,162,394
PROPERTY TAXES	5.07	SCH 8.1	$ 1,417,293	$ -	$ -	$ 1,417,293	ANNUAL USE[1]	$ 969,287
CAPITAL COST RECOVERY								
PRE-2009 ASSETS	5.03	ATT K						$ 24,051,326
DEBT SERVICE ON NEW ASSETS	5.04 (A)	SCH 2						$ 17,952,931
REVENUE FUNDED ASSETS - APPROPRIATED TO WHOLESALE CAPITAL FUND	5.04 (B)	SCH 3						$ 8,381,400
TOTAL CAPITAL COST RECOVERY								$ 50,385,657
WHOLESALE SHARE HETCH HETCHY WATER & POWER	5.04	SCH 4						$ 28,903,512
WHOLESALE REVENUE REQUIREMENT								$ 140,994,733
WHOLESALE REVENUE COVERAGE[3]								$ 4,488,233

[1]Proportional Annual Use (68.39%)
[2]Water Enterprise Share of Customer Accounts Expenses (62% of Total Customer Accounts Expenses)
[3]25% of Wholesale Share of Debt Service

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
WATER ENTERPRISE CAPITAL COST RECOVERY - ANNUAL DEBT SERVICE
FISCAL YEAR 2009-10
REFERENCE SECTION 5.04.A

ATTACHMENT N-2
SCHEDULE 2

	2006 BOND ISSUE SERIES A	2008 BOND ISSUE ALL SERIES	2009 BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	TOTAL ALL OUTSTANDING BONDS
USE OF BOND PROCEEDS								
RETAIL PROJECTS	31.61%	22.95%	19.42%	XX.XX%	XX.XX%	XX.XX%	XX.XX%	
REGIONAL PROJECTS	68.39%	77.05%	80.58%	YY.YY%	YY.YY%	YY.YY%	YY.YY%	
PRINCIPAL PAYMENT	$ 8,765,000	-	-	-			-	$ 8,765,000
RETAIL PROJECTS	$ 2,770,617	-	-			-	-	$ 2,770,617
REGIONAL PROJECTS	$ 5,994,384	-	-			-	-	$ 5,994,384
INTEREST PAYMENT (GROSS)	$ 23,353,388	$ 5,561,386	$ 56,181,932	-		-	-	$ 85,096,706
RETAIL PROJECTS	$ 7,382,006	$ 1,276,338	$ 10,910,531	-		-	-	$ 19,568,875
REGIONAL PROJECTS	$ 15,971,382	$ 4,285,048	$ 45,271,401	-		-	-	$ 65,527,831
INTEREST PAYMENT (CAPITALIZED)	-	-	$ 56,181,932					
RETAIL PROJECTS	-	-	$ 10,910,531					
REGIONAL PROJECTS	-	-	$ 45,271,401					
INTEREST PAYMENT (NET)	$ 23,353,388	$ 5,561,386	-					
RETAIL PROJECTS	$ 7,382,006	$ 1,276,338	-					
REGIONAL PROJECTS	$ 15,971,382	$ 4,285,048	-					
TOTAL PRINCIPAL AND INTEREST PAYMENT	32,118,388	5,561,386	-	-	-	-	-	$ 37,679,774
RETAIL PROJECTS	10,152,622	1,276,338	-	-	-	-	-	$ 11,428,961
REGIONAL PROJECTS	21,965,766	4,285,048	-	-	-	-	-	$ 26,250,813
PROPORTIONAL ANNUAL USE	68.39%	68.39%	68.39%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	
WHOLESALE SHARE	$ 15,022,387	$ 2,930,544	-	-	-	-	-	$ 17,952,931 (TO SCHEDULE 1)

Note: Allocation of bond proceeds shown are for illustrative purposes only. Regional projects will not include bond proceeds used to construct or acquire assets capitalized prior to 7/1/09. Regional projects also will not include in-city groundwater or in-city recycled water projects.

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
WATER ENTERPRISE CAPITAL COST RECOVERY - REVENUE FUNDED CAPITAL PROJECTS
FISCAL YEAR 2009-10
REFERENCE SECTION 5.04.B

ATTACHMENT N-2
SCHEDULE 3

		PROJECT APPROPRIATION	CLASSIFICATION	ALLOCATION FACTOR	WHOLESALE SHARE	TOTAL APPROPRIATION ALL YEARS	ALL YEARS ACTUAL EXPENDITURES	FY 2009-10 ACTUAL EXPENDITURES	ENCUMBERED, NOT EXPENDED	APPROPRIATED, UNENCUMBERED BALANCE
CUH980	Treasure Island Improvement Project	3,800,000	RETAIL	0.0%	$ -	$ -	$ -	$ -	$ -	$ -
CUW253	Facilities Security	500,000	RETAIL	0.0%	$ -	$ -	$ -	$ -	$ -	$ -
CUW260	Local Water R&R	22,347,520	RETAIL	0.0%	$ -	$ -	$ -	$ -	$ -	$ -
CUW686	Automated Meter Reading System	36,001,000	RETAIL	0.0%	$ -	$ -	$ -	$ -	$ -	$ -
	Total Local	62,648,520			$ -	$ -	$ -	$ -	$ -	$ -
CUW202	Replace Prestressed Concrete Cylr Pipe	-	REGIONAL	68.7%	$ -	$ -	$ -	$ -	$ -	$ -
CUW261	Regional Water R&R - Storage	-	REGIONAL	68.7%	$ -	$ -	$ -	$ -	$ -	$ -
CUW262	Regional Water R&R - Treatment Facilities	1,000,000	REGIONAL	68.7%	$ 687,000	$ 687,000	$ 235,000	$ 235,000	$ -	$ 452,000
CUW263	Regional Water R&R Conveyance/Transmission	7,000,000	REGIONAL	68.7%	$ 4,809,000	$ 4,809,000	$ 1,395,000	$ 1,395,000	$ 25,000	$ 3,389,000
CUW264	Regional Watersheds/ROW Management	500,000	REGIONAL	68.7%	$ 343,500	$ 343,500	$ 115,000	$ 115,000	$ 50,000	$ 178,500
FUW100	Regional Facilities Maintenance	3,700,000	REGIONAL	68.7%	$ 2,541,900	$ 2,541,900	$ 850,000	$ 850,000	$ 123,000	$ 1,568,900
	Total Regional	12,200,000			$ 8,381,400	$ 8,381,400	$ 2,595,000	$ 2,595,000	$ 198,000	$ 5,588,400
	TOTAL ALL PROJECTS	74,848,520			$ 8,381,400	$ 8,381,400	$ 2,595,000	$ 2,595,000	$ 198,000	$ 5,588,400
								(TO SCHEDULE 1)	(TO SCHEDULE 1)	(TO SCHEDULE 1)

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
CALCULATION OF WHOLESALE SHARE OF HETCH HETCHY WATER & POWER
FISCAL YEAR 2009-10
REFERENCE ARTICLE 5

ATTACHMENT N-2
SCHEDULE 4

EXPENSE CATEGORY	CONTRACT REFERENCE	SCHEDULE REFERENCE	TOTAL	POWER SPECIFIC	WATER SPECIFIC	JOINT	JOINT ALLOCATION PERCENTAGE	WATER-RELATED TOTAL	WHOLESALE ALLOCATION FACTOR	WHOLESALE SHARE
OPERATION AND MAINTENANCE										
OPERATION	5.08 B 1	SCH 8.2	$ 44,612,220	$ 31,853,965	$ 9,557,861	$ 3,200,394	45%	$ 10,998,038	ADJUSTED PROPORTIONAL ANNUAL USE	$ 7,484,165
MAINTENANCE	5.08 B 1	SCH 8.2	$ 16,868,612	$ 5,048,039	$ 3,238,622	$ 8,581,951	45%	$ 7,100,500	ADJUSTED PROPORTIONAL ANNUAL USE	$ 4,831,890
TOTAL OPERATION AND MAINTENANCE			$ 61,480,832	$ 36,902,004	$ 12,796,483	$ 11,782,345		$ 18,098,538		$ 12,316,055
ADMINISTRATIVE AND GENERAL										
COWCAP	5.08 B 2	SCH 8.2	$ 1,139,579	$ -	$ -	$ 1,139,579	45%	$ 512,811	ADJUSTED PROPORTIONAL ANNUAL USE	$ -
SERVICES OF SFPUC BUREAUS	5.08 B 2	SCH 7	$ 8,255,307	$ 5,375,656	$ 2,879,651	$ -	45%	$ 2,879,651	ADJUSTED PROPORTIONAL ANNUAL USE	$ 348,968
OTHER A&G	5.08 B 2	SCH 8.2	$ 25,581,481	$ 14,913,071	$ 36,070	$ 10,632,340	45%	$ 4,820,623	ADJUSTED PROPORTIONAL ANNUAL USE	$ 1,959,603
CUSTOMER ACCOUNTS	5.08 B 2	SCH 8.2	$ 347,403	$ 347,403	$ -	$ -	45%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ 3,280,434
TOTAL ADMINISTRATIVE AND GENERAL			$ 35,323,770	$ 20,636,130	$ 2,915,721	$ 11,771,919		$ 8,213,085		$ 5,589,004
PROPERTY TAXES	5.08 B 3	SCH 8.2	$ 452,000	$ -	$ -	$ 456,305	45%	$ 205,337	ADJUSTED PROPORTIONAL ANNUAL USE	$ 139,732
CAPITAL COST RECOVERY										
PRE-2009 ASSETS	5.09 B 1	ATT K-4								$ 3,118,033
DEBT SERVICE ON NEW ASSETS	5.09 B 2	SCH 5								$ -
REVENUE FUNDED ASSETS-APPROPRIATIONS TO WHOLESALE CAPITAL FUND	5.09 B 3	SCH 6								$ 7,740,688
TOTAL CAPITAL COST RECOVERY										$ 10,858,721
WHOLESALE SHARE OF HETCH HETCHY WATER & POWER										$ 28,903,512 (TO SCHEDULE 1)
WHOLESALE REVENUE COVERAGE[1]										$ -

[1]Adjusted Proportional Annual Use (66.39% X 99.50% = 66.05%)
[2]25% of Wholesale Share of Debt Service

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
HETCH HETCHY CAPITAL COST RECOVERY - ANNUAL DEBT SERVICE
FISCAL YEAR 2009-10
REFERENCE SECTION 5.09.B.1

ATTACHMENT N-2
SCHEDULE 5

	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	XXXX BOND ISSUE ALL SERIES	TOTAL ALL OUTSTANDIN G BONDS
USE OF BOND PROCEEDS								
POWER PROJECTS	XX.XX%	XX.XX%	XX.XX%	XX.XX%	XX.XX%	XX.XX%	XX.XX%	
WATER PROJECTS	YY.YY%	YY.YY%	YY.YY%	YY.YY%	YY.YY%	YY.YY%	YY.YY%	
JOINT PROJECTS	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	ZZ.ZZ%	
PRINCIPAL PAYMENT								
POWER SHARE	-	-	-	-	-	-	-	-
WATER SHARE	-	-	-	-	-	-	-	-
JOINT SHARE	-	-	-	-	-	-	-	-
INTEREST PAYMENT (NET)								
POWER SHARE	-	-	-	-	-	-	-	-
WATER SHARE	-	-	-	-	-	-	-	-
JOINT SHARE	-	-	-	-	-	-	-	-
TOTAL PRINCIPAL AND INTEREST PAYMENT								
POWER SHARE	-	-	-	-	-	-	-	-
WATER SHARE	-	-	-	-	-	-	-	-
JOINT SHARE	-	-	-	-	-	-	-	-
WATER RELATED PRINCIPAL AND INTEREST PAYMENT[1]	-	-	-	-	-	-	-	-
ADJUSTED PROPORTIONAL ANNUAL USE	68.05%	68.05%	68.05%	68.05%	68.05%	68.05%	68.05%	
WHOLESALE SHARE	-	-	-	-	-	-	-	-

(TO SCHEDULE 4)

[1]Water Related = 100% of Water Share + 45% of Joint Share

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
HETCH HETCHY CAPITAL COST RECOVERY - REVENUE FUNDED CAPITAL PROJECTS
FISCAL YEAR 2009-10
REFERENCE SECTION 5.04.B

ATTACHMENT N 2
SCHEDULE 5

		PROJECT APPROPRIATION	CLASSIFICATION	WATER RELATED PERCENTAGE	WATER RELATED SHARE	ALLOCATION FACTOR	WHOLESALE SHARE	TOTAL APPROPRIATION ALL YEARS	ALL YEARS ACTUAL EXPENDITURES	FY 2009-10 ACTUAL EXPENDITURES	ENCUMBERED, NOT EXPENDED	APPROPRIATED, UNENCUMBERED BALANCE
CUH931	HH Microwave Replacement	$ 4,000,000	JOINT	45%	$ 1,800,000	ADJUSTED PROPORTIONAL ANNUAL USE	$ 1,224,900	$ 1,224,900	$ 1,224,900	$ 1,224,900	$ -	$
CUH977	HH Water R&R - Facilities Maintenance	$ 3,500,000	JOINT	45%	$ 1,575,000	ADJUSTED PROPORTIONAL ANNUAL USE	$ 1,071,788	$ 1,071,788	$ 1,071,788	$ 1,071,788	$ -	$
	Total Joint	$ 7,500,000			$ 3,375,000		$ 2,296,688	$ 2,296,688	$ 2,296,688	$ 2,296,688	$ -	$
CUH947	SEA - Go Solar Incentive Project	$ 4,000,000	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
CUH971	Alternative Transmission Studies	$ 1,000,000	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
CUH976	HH Water R&R - Power Infrastructure	$ 16,700,000	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
CUH978	Hunters Point Municipal Power	$ -	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
CUH983	Civic Center Sustainability District	$ 1,090,000	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
CUH986	General Fund Dept - Energy Efficiency	$ 7,365,168	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
	Renewable/Generation	$ 3,501,307	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
	Treasure Island Improvement Project	$ 2,700,000	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
	Enterprise Fund Dept - Energy Efficiency	$ 325,722	POWER	0%	$ -	ADJUSTED PROPORTIONAL ANNUAL USE	$ -					
	Total Power	$ 36,682,167			$ -		$ -					
CUH975	HH Water R&R - Water Infrastructure	$ 6,000,000	WATER	100%	$ 6,000,000	ADJUSTED PROPORTIONAL ANNUAL USE	$ 4,083,000	$ 4,083,000	$ 4,083,000	$ 4,083,000	$ -	$
	Toulumne River Watershed Protection	$ 2,000,000	WATER	100%	$ 2,000,000	ADJUSTED PROPORTIONAL ANNUAL USE	$ 1,361,000	$ 1,361,000	$ 1,361,000	$ 1,361,000	$ -	$
	Total Water	$ 8,000,000			$ 8,000,000		$ 5,444,000	$ 5,444,000	$ 5,444,000	$ 5,444,000	$ -	$
	TOTAL ALL WATER RELATED PROJECTS	$ 96,364,374			$ 11,375,000		$ 7,740,688	$ 7,740,688	$ 7,740,688	$ 7,740,688 (TO SCHEDULE 4)	$ - (TO SCHEDULE 4)	$ - (TO SCHEDULE 4)

ILLUSTRATIVE ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
SERVICES OF SFPUC BUREAUS - ALLOCATION TO ENTERPRISES
FISCAL YEAR 2009-10
REFERENCE SECTION 5.05.B

ATTACHMENT N-2
SCHEDULE 7

		EXPENDITURES	ADJUSTMENTS	ADJUSTED EXPENDITURES	HETCH HETCHY POWER	HETCH HETCHY WATER	WATER RETAIL	WATER REGIONAL	WASTEWATER	TOTAL
ALLOCATION FACTORS (SCHEDULE N-7.1)					11.13%	5.96%	16.94%	29.59%	36.37%	
PUC01	General Manager	$ 7,609,114	$ -	$ 7,609,114	$ 847,180	$ 453,820	$ 1,288,884	$ 2,251,548	$ 2,767,682	$ 7,609,114
PUC1101	BizServ-Administration	$ 4,081,981	$ -	$ 4,081,981	$ 454,478	$ 243,456	$ 691,434	$ 1,207,864	$ 1,484,749	$ 4,081,981
PUC1102	Finance	$ 8,817,687	$ -	$ 8,817,687	$ 981,739	$ 525,902	$ 1,493,500	$ 2,609,166	$ 3,207,280	$ 8,817,687
PUC1103	ITS[1]	$ 18,048,158	$ (1,835,357)	$ 16,212,801	$ 1,805,093	$ 966,959	$ 2,746,235	$ 4,797,391	$ 5,897,123	$ 16,212,801
PUC1106	Human Resources	$ 7,678,483	$ -	$ 7,678,483	$ 854,903	$ 457,958	$ 1,300,634	$ 2,272,074	$ 2,792,914	$ 7,678,483
PUC1108	Customer Services	$ 12,262,428	$ (12,262,428)	$ -	$ -	$ -	$ -	$ -	$ -	$ -
PUC12	External Affairs	$ 3,882,455	$ -	$ 3,882,455	$ 432,263	$ 231,556	$ 657,637	$ 1,148,624	$ 1,412,175	$ 3,882,455
	TOTAL	$ 34,752,000	$ (12,731,000)	$ 48,282,521	$ 5,375,656 (TO SCHEDULE 4)	$ 2,879,651 (TO SCHEDULE 4)	$ 8,178,424 (TO SCHEDULE 1)	$ 14,286,867 (TO SCHEDULE 1)	$ 17,561,923	$ 48,282,521

[1]Adjustment for Transfer of SCADA Expenditures to T&D Joint ($1,730,000)

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
SERVICES OF SFPUC BUREAUS - ANNUAL SALARIES
FISCAL YEAR 2009-10
REFERENCE SECTION 5.05.B

ATTACHMENT N-2
SCHEDULE 7.1

DEPARTMENT/DIVISION	ALLOCATION FACTOR	GROUP CODE	SALARIES	PERCENTAGE
HETCH HETCHY				
POWER		1	$ 6,677,939	6.27%
WATER		2	$ 1,775,910	1.67%
JOINT			$ 9,428,450	
WATER SHARE	45%	2	$ 4,242,803	3.98%
POWER SHARE	55%	1	$ 5,185,648	4.87%
WATER				
ADMINISTRATION (WTR01)			$ 1,009,246	
RETAIL SHARE	33.4%	3	$ 336,415	0.32%
REGIONAL SHARE	33.3%	4	$ 336,415	0.32%
HETCH HETCHY WATER SHARE	33.3%	2	$ 336,416	0.32%
CDD (WTR03)		3	$ 17,356,922	16.29%
WATER QUALITY (WTR04)		4	$ 7,282,589	6.83%
WATER SUPPLY & TREATMENT (WTR05)		4	$ 18,164,689	17.05%
NATURAL RESOURCES (WTR06)		4	$ 4,682,073	4.39%
WATER RESOURCE PLANNING			$ 1,419,760	
WATER CONSERVATION		3	$ 355,703	0.33%
RETAIL WATER RESOURCE PLANNING		3	$ -	
REGIONAL SHARE (NET SALARIES)		4	$ 1,064,057	1.00%
WASTEWATER		5	$ 38,757,578	36.37%
SALARIES BY GROUP CODE				
HETCH HETCHY - POWER		1	$ 11,863,587	11.13% (TO SCHEDULE 7)
HETCH HETCHY - WATER		2	$ 6,355,129	5.96% (TO SCHEDULE 7)
WATER - RETAIL		3	$ 18,049,040	16.94% (TO SCHEDULE 7)
WATER- REGIONAL		4	$ 31,529,823	29.59% (TO SCHEDULE 7)
WASTEWATER		5	$ 38,757,578	36.37% (TO SCHEDULE 7)
TOTAL SALARIES			$ 106,555,156	100.00%

ADMINISTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
CALCULATION OF THE WHOLESALE REVENUE REQUIREMENT
FISCAL YEAR 2009-10
WATER ENTERPRISE SUMMARY OF OPERATING EXPENSES

ATTACHMENT N-2
SCHEDULE 8.1

	Retail	Wholesale	Regional	Total
Operating Expenses				
Transmission & Distributions	$ 30,163,286	$ -	$ 23,252,946	$ 53,416,232
Adjustments to Transmission & Distribution	$ -	$ -	$ -	$ -
Adjusted Transmission & Distribution	$ 30,163,286	$ -	$ 23,252,946	$ 53,416,232
Source of Supply	$ 1,251,062	$ -	$ 13,692,891	$ 14,943,953
Adjustments to Source of Supply	$ -	$ -	$ -	$ -
Adjusted Source of Supply	$ 1,251,062	$ -	$ 13,692,891	$ 14,943,953
Pumping	$ 3,854,000	$ -	$ 488,682	$ 4,342,682
Adjustments to Pumping	$ -	$ -	$ -	$ -
Adjusted Pumping	$ 3,854,000	$ -	$ 488,682	$ 4,342,682
Treatment	$ -	$ -	$ 30,445,053	$ 30,445,053
Adjustments to Treatment	$ -	$ -	$ -	$ -
Adjusted Treatment	$ -	$ -	$ 30,445,053	$ 30,445,053
Customer Accounts	$ 7,401,169	$ 151,044	$ -	$ 7,552,213
Adjustments to Customer Accounts	$ -	$ -	$ -	$ -
Adjusted Customer Accounts	$ 7,401,169	$ 151,044	$ -	$ 7,552,213
Total Adjusted Operating Expense	$ 42,669,517	$ 151,044	$ 67,879,572	$ 110,700,133
General & Administrative Expense				
COWCAP	$ -	$ -	$ 1,238,009	$ 1,238,009
Services of SFPUC Bureaus	$ 8,178,424	$ -	$ 14,286,867	$ 22,465,291
Other General & Administrative	$ 4,009,891	$ -	$ 8,962,586	$ 12,972,477
Adjustments to General & Administrative	$ -	$ -	$ -	$ -
Adjusted General & Administrative	$ 4,009,891	$ -	$ 8,962,586	$ 12,972,477
Compliance Audit	$ 100,000	$ 100,000	$ -	$ 200,000
Total General & Administrative	$ 12,288,315	$ 100,000	$ 24,487,462	$ 36,875,777
Property Taxes	$ -	$ -	$ 1,417,293	$ 1,417,293
Total	$ 54,957,832	$ 251,044	$ 93,784,327	$ 148,993,203

Source: FAMIS/EIS
Note: All adjustments to be separately identified above

ILLUSTRATION ONLY DRAFT

WHOLESALE REVENUE REQUIREMENT SCHEDULES
CALCULATION OF THE WHOLESALE REVENUE REQUIREMENT
FISCAL YEAR 2009-10
HETCHY HETCHY WATER & POWER SUMMARY OF OPERATING EXPENSES

ATTACHMENT N-2
SCHEDULE 8.2

	Power	Water	Joint	Total
Operating Expenses				
Purchased Power & Wheeling	$ 28,953,676			$ 28,953,676
Adjustments to Purchased Power & Wheeling	$ -			$ -
Adjusted Purchased Power & Wheeling	$ 28,953,676			$ 28,953,676
Operations				
Hydraulic Generation	$ 2,900,291	$ -	$ 3,200,394	$ 6,100,685
Transmission & Distribution	$ -	$ -	$ -	$ -
Water Quality Expense	$ -	$ 9,557,862	$ -	$ 9,557,862
Adjustments to Operations	$ -	$ -	$ -	$ -
Adjusted Operations	$ 2,900,291	$ 9,557,862	$ 3,200,394	$ 15,658,547
Maintenance				
Hydraulic Generation	$ 1,840,096	$ 3,238,622	$ 8,581,952	$ 13,660,670
Transmission & Distribution	$ 3,359,385	$ -	$ -	$ 3,359,385
Water Quality Expense	$ -	$ -	$ -	$ -
Adjustments to Maintenance	$ (151,442)	$ -	$ -	$ (151,442)
Adjusted Maintenance	$ 5,048,039	$ 3,238,622	$ 8,581,952	$ 16,868,613
Total Adjusted Operating Expense	$ 36,902,006	$ 12,796,484	$ 11,782,346	$ 61,480,836
General & Administrative Expense				
COWCAP	$ -	$ -	$ 1,139,579	$ 1,139,579
Services of SFPUC Bureaus	$ 5,375,656	$ 2,879,651	$ -	$ 8,255,307
Customer Accounts	$ 347,403	$ -	$ -	$ 347,403
Adjustments to Customer Accounts	$ -	$ -	$ -	$ -
Adjusted Customer Accounts	$ 347,403	$ -	$ -	$ 347,403
Other General & Administrative	$ 14,913,071	$ 36,070	$ 10,632,340	$ 25,581,481
Adjustments to General & Administrative	$ -	$ -	$ -	$ -
Adjusted General & Administrative	$ 14,913,071	$ 36,070	$ 10,632,340	$ 25,581,481
Total General & Administrative	$ 20,636,130	$ 2,915,721	$ 11,771,919	$ 35,323,770
Property Taxes	$ -	$ -	$ 452,000	$ 452,000
Total	$ 57,538,136	$ 15,712,205	$ 24,006,265	$ 97,256,606

Source: FAMIS/EIS
Note: All adjustments to be separately identified above

ILLUSTRATION ONLY DRAFT

SCHEDULE OF PROJECTED WATER SALES, WHOLESALE REVENUE REQUIREMENTS, AND WHOLESALE RATES

CONTRACT REFERENCE: ARTICLE 6.03.A.3

ATTACHMENT N-3

	FISCAL YEAR				
	N	N+1	N+2	N+3	N+4
OPERATION AND MAINTENANCE EXPENSES					
SOURCE OF SUPPLY	$ 9,364,568	$ -	$ -	$ -	$ -
PUMPING	$ 334,210	$ -	$ -	$ -	$ -
TREATMENT	$ 20,821,372	$ -	$ -	$ -	$ -
TRANSMISSION & DISTRIBUTION	$ 15,902,690	$ -	$ -	$ -	$ -
CUSTOMER ACCOUNTS	$ 151,044	$ -	$ -	$ -	$ -
TOTAL OPERATION AND MAINTENANCE EXPENSES	$ 46,573,884	$ -	$ -	$ -	$ -
ADMINISTRATIVE AND GENERAL EXPENSES					
COWCAP	$ 520,857	$ -	$ -	$ -	$ -
SF PUBLIC UTILITIES COMMISSION	$ 9,770,788	$ -	$ -	$ -	$ -
OTHER A&G	$ 3,770,749	$ -	$ -	$ -	$ -
COMPLIANCE AUDIT	$ 100,000	$ -	$ -	$ -	$ -
TOTAL ADMINISTRATIVE AND GENERAL EXPENSES	$ 14,162,394	$ -	$ -	$ -	$ -
PROPERTY TAXES	$ 969,287	$ -	$ -	$ -	$ -
CAPITAL COST RECOVERY					
PRE 2009 ASSETS	$ 24,951,326	$ -	$ -	$ -	$ -
DEBT SERVICE ON NEW ASSETS	$ 17,952,931	$ -	$ -	$ -	$ -
REVENUE FUNDED CAPITAL	$ 8,481,400	$ -	$ -	$ -	$ -
TOTAL CAPITAL COST RECOVERY	$ 50,385,657	$ -	$ -	$ -	$ -
WHOLESALE SHARE HHW&P	$ 28,903,512	$ -	$ -	$ -	$ -
WHOLESALE REVENUE REQUIREMENT	$ 140,994,734	$ -	$ -	$ -	$ -
BALANCING ACCOUNT AS OF JUNE 30	$ -	$ -	$ -	$ -	$ -
INTEREST ON BALANCING ACCOUNT	$ -	$ -	$ -	$ -	$ -
WHOLESALE REVENUES AT EXSITING RATE	$ (127,485,900)	$ -	$ -	$ -	$ -
WHOLESALE EXCESS USE CHARGES	$ -	$ -	$ -	$ -	$ -
SETTLEMENT CREDITS AND OTHER ADJUSTMENTS	$ 21,000	$ -	$ -	$ -	$ -
1984 AGREEMENT BALANCING ACCOUNT CREDITS	$ 1,997,220	$ -	$ -	$ -	$ -
WHOLESALE DEBIT SERVICE COVERAGE RESERVE	$ 4,488,233	$ -	$ -	$ -	$ -
WHOLESALE DEFICIENCY OR CREDIT	$ 20,015,287	$ -	$ -	$ -	$ -
PERCENT WHOLESALE DEFICIENCY OR CREDIT OF REVENUES AND EXCESS USE CHARGES	15.7%				
PROJECTED WATER SALES (CCF)	85,920,000	0	0	0	0
WHOLESALE DEFICIENCY OR CREDIT ($/CCF)	0.23	0	0	0	0
PROJECTED WHOLESALE RATE (UNIT COST ($/CCF)	1.66	0	0	0	0
PROJECTED SERVICE CHARGE REVENUES	$ 4,620,300				
PROJECTED VOLUME CHARGE REVENUES	$ 142,627,200				
TOTAL WHOLESALE REVENUES	$ 147,247,500				

ILLUSTRATION ONLY DRAFT

ATTACHMENT O
STATEMENT OF WHOLESALE REVENUE REQUIREMENT/ CHANGES IN BALANCING ACCOUNT
YEAR ENDED JUNE 30
(Section 7.02.B)

	FY 2008-09 Allocation to Wholesale Customers	FY 2009-10 Allocation to Wholesale Customers	Difference
Wholesale Revenue Requirement Calculation:			
Operating and maintenance (O&M) expense:			
San Francisco Water Enterprise:			
Source of supply	$ 9,133,025	$ 9,364,568	$ 231,543
Pumping	$ 325,946	$ 334,210	$ 8,264
Purification	$ 20,437,460	$ 20,821,372	$ 383,912
Transmission and distribution	$ 9,350,279	$ 15,902,690	$ 6,552,411
Customer Accounts	$ 224,255	$ 151,044	$ (73,211)
Total SFWE operating and maintenance	$ 39,470,965	$ 46,573,884	$ 7,102,919
Hetch Hetchy Water and Power (HHWP):			
Operating expenses	$ 10,359,786	$ 7,484,165	$ (2,875,621)
Maintenance expenses	$ 4,526,240	$ 4,831,890	$ 305,650
Total HHWP operating and maintenance	$ 14,886,026	$ 12,316,055	$ (2,569,971)
Administrative and general (A&G) expenses:			
COWCAP			
SFWE	$ 512,438	$ 520,857	$ 8,419
HHWP	$ 162,364	$ 348,968	$ 186,604
SF Public Utilities Commission:			
SFWE	$ 7,461,835	$ 9,770,788	$ 2,308,953
HHWP	$ 2,357,622	$ 1,959,603	$ (398,019)
Other A&G – SFWE	$ 8,234,799	$ 3,770,749	$ (4,464,050)
Other A&G – HHWP	$ -	$ 3,280,434	$ 3,280,434
Compliance audit	$ 95,338	$ 100,000	$ 4,662
Total administrative and general expenses	$ 18,824,396	$ 19,751,399	$ 927,003
Property taxes (outside city only):			
SFWE	$ 964,040	$ 969,287	$ 5,247
HHWP	$ 120,923	$ 139,732	$ 18,809
Total property taxes	$ 1,084,963	$ 1,109,019	$ 24,056
Capital Cost Recovery			
Pre-2009 Assets			
SFWE		$ 24,051,326	
HHWP		$ 3,118,033	
Debt Service on New Assets			
SFWE		$ 17,952,931	
HHWP		$ -	
Revenue Funded Assets			
SFWE		$ 8,381,400	
HHWP		$ 7,740,688	
Total Capital Cost Recovery	$ 46,378,941	$ 61,244,378	$14,865,437
Total Wholesale Revenue Requirement	$ 120,645,291	$ 140,994,735	$20,349,444
Balancing Account July 1	$ 21,176,614	$ -	
Interest on adjusted beginning balance	$ 529,415	$ -	
Wholesale revenues billed	$ (123,604,000)	$ (147,247,500)	
Excess use charges billed	$ -	$ -	
Wholesale Revenue Coverage Reserve	$ -	$ 4,488,233	
Other adjustments	$ -	$ -	
Settlement adjustments	$ 21,006	$ 21,006	
1984 Agreement Balancing Account Credits	$ -	$ 1,997,220	
Balancing Account June 30	$ 18,768,326	$ 253,694	

ILLUSTRATION ONLY DRAFT

Attachment P

REPRESENTATION LETTER

Certification Pursuant to Water Sales Agreement (the Agreement) between the City and County of San Francisco (San Francisco) and certain wholesale customers in the counties of San Mateo, Santa Clara, and Alameda (the Wholesale Customers) effective July 1, 2009.

Each of the undersigned certifies that:

1. I have reviewed San Francisco Water Department and Hetch Hetchy Water & Power Department Report on the Calculation of the Wholesale Revenue Requirement and Statement of Changes in the Balancing Account (the Statement) for the year ended June 30, 200X;

Based on my knowledge, this report and Statement do not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

Based on my knowledge, the Statement and other financial information included in the report, fairly presents in all material respects the proper costs incurred and allocated to the Wholesale Customers in accordance with the provisions of the Agreement.

The below certifying officers and I are responsible for establishing and maintaining internal control over financial reporting and have:

Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting for purposes of the preparation of the Statement.

Evaluated the effectiveness of the allocation procedures to ensure compliance with the terms of the Agreement.

The Statement fully complies with the contractual requirements of the Agreement and fairly presents, in all material respects, the allocation of costs to the Wholesale Customers in accordance with the Agreement.

General Manager, SFPUC — Date

Assistant General Manager & Chief Financial Officer, SFPUC — Date

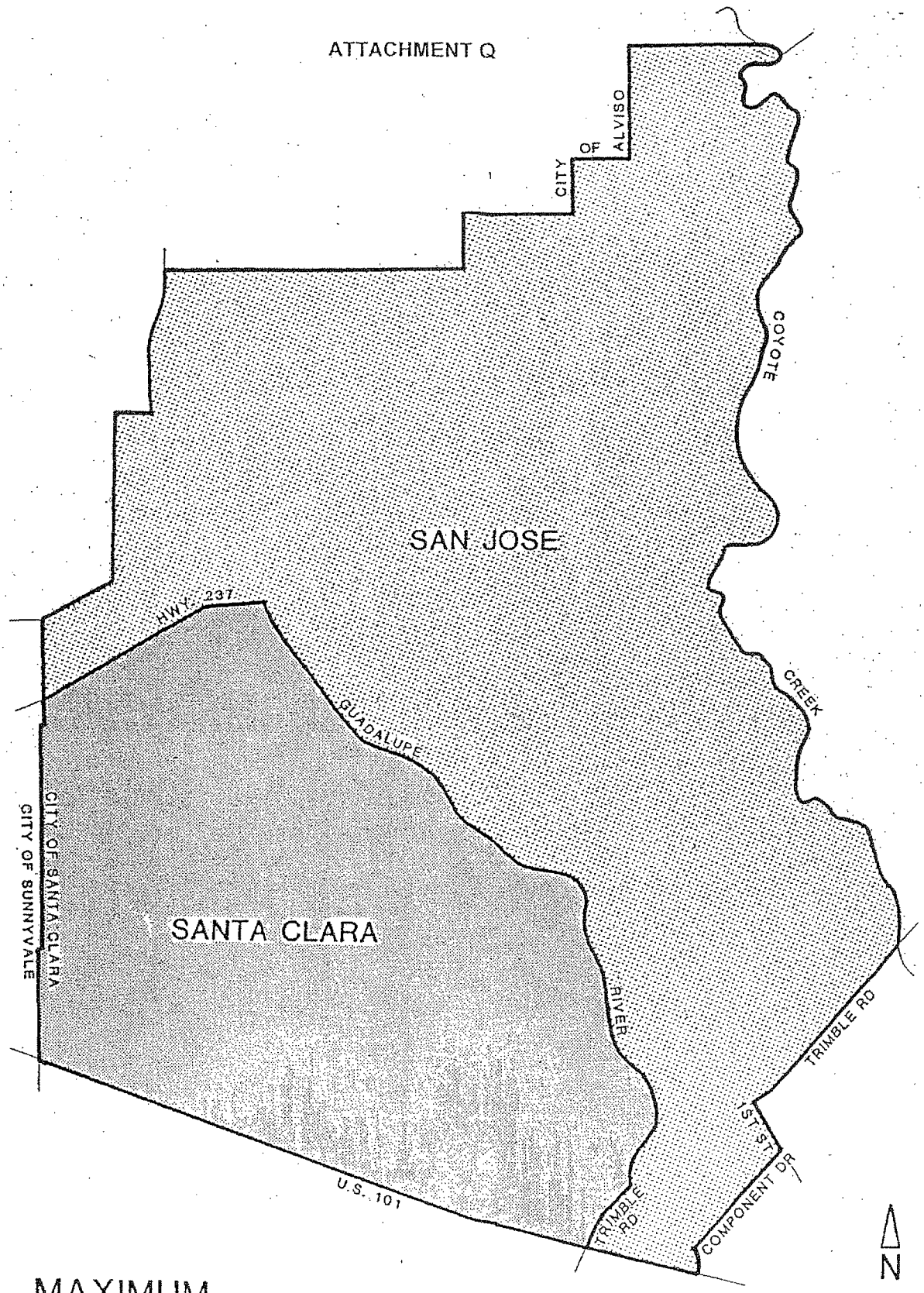
Finance Director, SFPUC — Date

Accounting Manager, SFPUC — Date

Financial Planning Manager, SFPUC — Date

Senior Rates Administrator, SFPUC — Date

ATTACHMENT Q



MAXIMUM
SERVICE AREAS

APPENDIX C

South Bay Water Recycling Contract

EXECUTORY COPY

6-13-95
9d (15)
Reso. 65970

SOUTH BAY WATER RECYCLING PROGRAM

WHOLESALER - RETAILER AGREEMENT FOR SUPPLY OF RECYCLED WATER

BETWEEN

CITY OF SAN JOSE
AND
CITY OF SANTA CLARA

May 10, 1995

SOUTH BAY WATER RECYCLING PROGRAM

WHOLESALER - RETAILER AGREEMENT FOR SUPPLY OF RECYCLED WATER

BETWEEN CITY OF SAN JOSE AND CITY OF SANTA CLARA

This Agreement is made and entered into on this 13th day of June, 1995, (Effective Date) between the City of San Jose hereinafter referred to as the "Wholesaler" and the City of Santa Clara, California, a chartered municipal corporation, hereinafter referred to as "Retailer". Wholesaler and Retailer may be referred to herein individually as a "Party" or collectively as the "Parties" or "Parties to this Agreement".

RECITALS

WHEREAS:

A. Wholesaler is Party to an agreement entitled "Agreement Between San Jose and Santa Clara Respecting Sewage Treatment Plant", dated May 6, 1959, and subsequently amended concerning a jointly owned Publicly Owned Treatment Works (POTW) now called the San Jose/Santa Clara Water Pollution Control Plant (WPCP); and

B. Wholesaler has certain authority as the Administering Agency of the 1959 Agreement and as such entitled to all powers common both to the City of San Jose and the City of Santa Clara; and

C. WPCP regulatory permit requires development of a nonpotable reclamation program; and

D. The WPCP is permitted by the State of California San Francisco Bay Regional Water Quality Control Board to distribute and use treated effluent as recycled water; and

E. Wholesaler is supporting the development and construction of a regional recycled water distribution system; and

F. Included within said system are facilities to treat and distribute such recycled water; and

G. Wholesaler will determine, fund (subject to appropriation), and construct the most cost effective extensions of the recycled water distribution system to allow customers and Retailers to plan for extensions and promote increased delivery of recycled water in accordance with the diversion needs of the WPCP; and

H. Retailer is duly authorized to serve recycled water in accordance with Title 22 of the California Administrative Code and the California Department of Health Services; and

I. Recycled water to be delivered by the Wholesaler will be suitable for "non-potable unrestricted use," in accordance with Title 22 of the California Administrative Code and the California Department of Health Services; and

J. Retailer wishes to acquire from Wholesaler, a quantity of the recycled water produced at the WPCP to sell to retail customers, located within the Retailer's' service area.

AGREEMENT PROVISIONS

For and in consideration of the mutual promises and covenants herein contained, the Parties hereto agree as follows:

ARTICLE A. INTRODUCTORY PROVISIONS

1. **Definitions** - When used in this Agreement, the following terms shall have the meanings hereinafter set forth:

(a) "Fiscal Year" shall mean each 12-month period during the term of this Agreement commencing July 1 of one year and terminating June 30 of the next succeeding year, both dates inclusive.

(b) "Each Retailer", or "Other Retailer", shall mean any entity, public or private, contracting with Wholesaler for a supply of recycled water.

(c) "Point-of-Connection" shall mean the recycled water customer retail meter.

2. **Term** - This Agreement shall commence on the Effective Date. However, Retailer shall not pay for recycled water provided hereunder until the Wholesaler begins operation of the recycled water distribution system.

3. **Termination** - This Agreement may be terminated for reasonable cause with 60 day written notice pursuant to mutual agreement of both Parties.

ARTICLE B. RECYCLED WATER SERVICE PROVISIONS

1. **Recycled Water Delivery Limitations**

(a) Retailer understands and acknowledges that Wholesaler is charged with the responsibility to operate its sewerage systems in a manner which it determines to be most beneficial to the users thereof. The rights of Retailer to recycled water under this Agreement pertain only to the recycled water which actually is produced at the WPCP. Nothing contained herein shall be construed to qualify in any manner Wholesaler's right to operate the WPCP at such level as it determines, in its absolute discretion to be appropriate, or to discontinue the operation of the WPCP. Any right of Retailer to recycled water pursuant to this Agreement shall be subordinate to the rights and responsibilities of Wholesaler as herein set forth.

(b) Nothing herein shall be construed to commit any portion of the recycled water from the WPCP beyond that which will be

delivered by Retailer to its customers for reasonable beneficial uses. No such determination which reduces the availability of recycled water to Retailer hereof shall be made unless the Wholesaler has given to Retailer at least 60 days advance written notice of such proposed determination and has afforded to Retailer an opportunity to meet and confer on the issue.

(c) Wholesaler intends to make available only that recycled water from the WPCP in quantities which will not in aggregate exceed those which will be produced at the WPCP. However, any circumstances beyond the Wholesaler's control which cause a reduction in the flow available from the WPCP may, at the discretion of the Wholesaler, result in a temporary or permanent decrease in recycled water available to Retailer under this Agreement in such amounts as the Wholesaler determines are necessary in order to fairly allocate any such reduced flow among all retailers of recycled water from the WPCP. The Wholesaler shall allocate reduced flow among all of the users of recycled water produced at the WPCP in proportion to the actual use in the previous fiscal year of recycled water produced at the WPCP, subject to the pre-existing rights of others which preclude such an allocation. The reduced availability will continue in effect until such time as the WPCP and recycled water transmission and distribution system have been restored to normal capacity.

2. **Recycled Water Delivery Schedules**

(a) Subject to the provisions hereafter set forth, Wholesaler agrees to make available each fiscal year (July 1 through June 30) during the term hereof to Retailer, recycled water produced at the WPCP. The Retailer shall not be required to accept a minimum amount of recycled water over any period of time.

(b) For Wholesaler operating and planning purposes, Retailer shall, on forms provided by Wholesaler, annually supply Wholesaler with Retailer's anticipated monthly delivery schedules for the ensuing

year and such information reasonably needed by Wholesaler to determine projected annual deliveries for the next ensuing 5 years. Retailer's anticipated monthly delivery schedules shall not constitute a commitment by Retailer to receive the amounts of recycled water set forth therein but shall establish the monthly schedule amounts of recycled water to be delivered to Retailer.

(c) The non-binding, target recycled water delivery schedule for fiscal years 1997-98 through 2001-02 is set forth in Exhibit B, attached hereto and by this reference made a part hereof.

3. **Metering and Measurement of Flows**

(a) Retailer agrees to install customer meters meeting local and state requirements of a size approved by the Wholesaler at no expense to the Wholesaler for the purpose of measuring the quantity of recycled water delivered and utilized by the retail customers pursuant to this Agreement.

(b) Retailer agrees to inform the Wholesaler in writing of the total quantity of recycled water provided each quarter to each individual service connection where Retailer provides the recycled water.

(c) Retailer agrees to permit Wholesaler access to meters and records which measure and register recycled water flow for purposes of verifying the quantity of recycled water delivered.

(d) Wholesaler may measure all recycled water delivered to Retailer. This wholesale delivery (master) metering will be in addition to any retail (customer) metering conducted by the Retailer; it is agreed that Retailer metering shall govern quarterly billing and measure all recycled water delivered to Retailer. The Retailer metering shall also be used for reporting recycled water usage to regulatory agencies.

4. **Recycled Water Quality**

(a) Wholesaler agrees that all recycled water to be delivered by it to Retailer pursuant to the terms of this Agreement will be of such quality that the same may be used for all purposes allowed for disinfected tertiary recycled water. Wholesaler agrees that the recycled water to be delivered to Retailer pursuant to this Agreement shall conform to the quality requirements set forth in the then current disinfected tertiary recycled water quality and monitoring regulations specified in Title 22, Division 4, Chapter 3: Wastewater Reclamation Criteria (California Code of Regulations), as further regulated by the California Regional Water Quality Control Board - San Francisco Bay Region, the California Department of Health Services and all other federal, state and local agencies having jurisdiction over recycled water quality.

(b) Both Parties recognize that factors beyond the control of Wholesaler could cause operational difficulties at the WPCP resulting in the temporary production of recycled water which does not meet the current requirements established by the RWQCB, Title 22 of the California Administrative Code and the California Department of Health Services or other regulatory agencies for the Retailer's customers intended uses. In such cases, the Wholesaler shall temporarily suspend Retailer's right to recycled water from Wholesaler's facilities. Wholesaler shall use its best efforts to re-establish the production of recycled water of a suitable quality as soon as reasonably possible and shall re-establish Retailer's supply of such water accordingly.

(c) Wholesaler shall immediately notify Retailer if recycled water from the WPCP does not meet the current applicable regulatory requirements or if deliveries of recycled water will be suspended. Such notice shall be given verbally to Retailer, telephone (408) 984-3183 between 8:00 a.m. - 4:30 p.m. weekdays, or the Retailer's Emergency Operator, telephone (408) 984-3136 after hours, weekends, and holidays, with a follow-up written confirmation by

personal delivery or FAX (408) 241-8291 on the same day verbal notice is given, or on the next business day if verbal notice is not given during business hours.

5. **Recycled Water Limitation of Use -** Recycled water delivered from the WPCP pursuant to terms hereof has limited uses, and Retailer agrees to provide the recycled water it receives hereunder only to retail customers which the Wholesaler represents that the Customer uses or purposes are legally permissible under the laws of the state and the directives of the appropriate regulatory agencies.

6. **Permits** - This Agreement is conditioned on obtaining the necessary permits relating to the use of recycled water and the development and construction of a regional recycled water distribution system. Each of the Parties undertakes and agrees, severally and jointly as appropriate, to file any and all applications and undertake such proceedings as may be necessary to enable each Party to carry out the undertakings contemplated herein, and to pursue each application and proceedings in good faith and due diligence. Wholesaler will act as lead agency in obtaining, complying with, and maintaining these permits. However, both Wholesaler and Retailer are responsible, where applicable, to comply with the regulations set forth in these permits.

ARTICLE C. RECYCLED WATER FACILITIES

1. **Construction of Facilities**

(a) Recycled water delivered to Retailer pursuant to this Agreement shall be provided from Wholesaler through treatment and distribution facilities to be located at such locations as may be mutually agreed upon. Wholesaler agrees to provide service taps from its distribution facilities as well as service lines to each of the Retailer's customer meters (point-of-connection), from which recycled water may be received by the Retailer for sale to Retailer's retail customers. Retailers shall purchase and install Customer meters.

(b) Wholesaler may make funds available for the design and construction of necessary customer retrofits to convert the retail customers' on-site facilities for the use of recycled water. Customers will also have the option of funding their own design and construction of the necessary retrofits. For all recycled water customers receiving a loan from the Wholesaler for the retrofit of their recycled water system, the customer will be billed by the Wholesaler.

2. **Extension of Facilities**

(a) The Wholesaler shall review all pipeline extensions proposed by any customer or Retailer. In the event a customer or Retailer requests the Wholesaler to fund a portion of the costs for construction of a recycled water pipeline extension, the Wholesaler shall determine whether to fund and the extent of funding. All extensions will be approved and ranked using uniform selection criteria set by the Wholesaler. The selection criteria shall include, but may not be limited to, an analysis of the marginal cost (including both capital and O&M cost estimates) of the proposed pipeline extension and the amount of recycled water projected to be sold along the pipeline extension. Funding by Wholesaler shall be within the WPCP capital budget and will be subject to Treatment Plant Advisory Committee and City of San Jose Council appropriations and approvals. Additional funding above the amount provided by the Wholesaler may be provided by the Retailer in or for whose service area the line extension is being provided. Subject to funding, the Wholesaler shall publish each fiscal year the capital budget for recycled water distribution pipeline extensions within the area served by the Wholesaler. The annual extension capital budget shall include:

1. Total extension funding available for the fiscal year; and

2. Target marginal cost per Acre Feet for projected annual recycled water use as a guide for Wholesaler consideration of any proposed extensions of recycled water distribution pipelines.

(b) A ranking list shall be established for proposed extensions of recycled water distribution pipelines to be funded (subject to appropriation) in each fiscal year. Those proposed extensions submitted but not funded in a given year may be resubmitted and reconsidered in succeeding years.

(c) In the event a customer or Retailer funds a portion or all of the costs for construction of a recycled water pipeline extension, title to all said extension facilities and to all appurtenances up to the points of connection shall remain with the Wholesaler. Operation and maintenance of extension facilities shall be per Article C, Section 3.

3. **Ownership, Operation and Maintenance of Facilities**

(a) Except as subject to any other agreements, Wholesaler agrees to own, operate and maintain at no cost to Retailer, all of its transmission and distribution facilities up to the points of connection.

(b) Retailer agrees to own, operate and maintain at no cost to Wholesaler, its customer meters and service valves (see Exhibit C) required to receive at the point of connection the recycled water for delivery to Retailer's retail customers.

(c) Customer owns, operates and maintains all on-site facilities for the use of recycled water, subject to any security interest Wholesaler may have from outstanding retrofit loans.

4. **Monitoring** - Wholesaler's responsibility for management and monitoring the recycled water delivered hereunder shall cease upon delivery to Retailer at the point-of-connection. Operation, management, maintenance and monitoring of facilities under the control of the Retailer (i.e., customer meter and service valve) shall be the sole responsibility of the Retailer. The Wholesaler agrees to accept responsibility for conformance to all monitoring, reporting, and any other requirements assigned to the "recycled water agency" in Title 22 of the California Administrative Code, State of California San Francisco Bay Regional Water Quality Control Board and the California Department of Health Services.

5. **Reporting** - Retailer to provide Wholesaler the following reporting information:

   (a) Quarterly billing and recycled water use records (with individual customer information) within 30 days of the close of each fiscal quarter.

   (b) Customer site self-monitoring reports required by the State of California San Francisco Bay Regional Water Quality Control Board.

   (c) Wholesaler will be given adequate notification of Retailer inspections, start-ups and disconnection's.

ARTICLE D. PAYMENT PROVISIONS

1. **Recycled Water Pricing Policy** - The wholesale rate for recycled water shall provide an economic incentive to recycled water customers.

2. **Recycled Water Rate Review** -Wholesaler shall charge for the delivery of recycled water in accordance with the rate schedule for recycled water service as such rate schedule is established by the Wholesaler and approved by the Treatment Plant Advisory Committee and approved by the City of San Jose Council. The Wholesaler shall review and establish said rate schedule every fiscal year. The Retailer shall be given an opportunity to meet and confer upon the pricing policy and rate with the Wholesaler prior to setting the wholesale recycled water.

3. **Billings** - Retailer agrees to make quarterly payments for the total amount of recycled water delivered in each fiscal quarter at the unit price as determined in Article D.

4. **Time and Method of Payment** - The fiscal year shall be July 1 through June 30. Retailer agrees to make each quarterly payment within 30 days of the receipt of invoice from Wholesaler.

5. **Non-Payment Disconnection -** In the event of non-payment for 60 days after mailing of invoice, unless such amount is the subject of a dispute, Wholesaler may disconnect Retailer's facilities at the points of connection and order all Retailer's facilities removed from Wholesaler property. This remedy is in addition to all other remedies provided by law.

ARTICLE E. GENERAL PROVISIONS

1. **Amendments** - This Agreement may be amended at any time by mutual written agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Wholesaler agrees that in the event of legally enforceable action by a cognizant governmental body, producing a prospective change in the volume of use of recycled water by Retailer's customers, Wholesaler will make such amendments to Exhibit B of this Agreement as the circumstances may reasonably and equitably require.

2. **Challenge of Laws** - Nothing herein contained shall be construed as stopping or otherwise preventing Retailer or Wholesaler from contesting by litigation or other lawful means the validity, constitutionality, construction, or application of any law of this state, any ordinance of Wholesaler, or any rule, regulation or practice of Wholesaler or Retailer.

3. **Waiver of Rights** - Any waiver at any time by either Party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter. None of the covenants or agreements herein contained can be waived except by the written consent of the waiving Party.

4. **Notices** - All notices or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by either Party hereto to the other, shall be deemed to have been given or made or sent when made in writing and deposited in the United States mail, registered, or certified, postage prepaid, and addressed as follows:

Wholesaler:	Director, Environmental Services Department SJ/SC Water Pollution Control Plant 700 Los Esteros Road San Jose, California 95134
Retailer:	City of Santa Clara 1500 Warburton Ave. Santa Clara, California 95050

The address to which any notice or other writing may be given or made or sent to either Party may be changed upon written notice given by such Party as above provided.

5. **Separability** - If any one or more of the covenants or agreements set forth in this Agreement on the part of Wholesaler or Retailer, or either of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in nowise affect the validity of this Agreement.

6. **Paragraph Headings** - Paragraph headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

7. **Other Agreements** - Wholesaler agrees that each agreement for the supply of recycled water hereafter entered into by Wholesaler with any Other Retailer shall contain provisions substantially similar to those herein set forth and shall not contain any provisions of a material nature more favorable to the Other Retailer than the provisions herein applicable to the Retailer.

8. **Successors and Assigns** - Subject to the provisions of the succeeding Section 9 hereof, this Agreement and all the terms, covenants, agreements, and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

9. **Assignment** - No assignment or transfer by Retailer of this Agreement or any part hereof, or of any rights hereunder or interest herein of Retailer, shall be valid unless approved by Wholesaler, which approval Wholesaler agrees shall not be unreasonably withheld. The foregoing provisions of this Section 9 to the contrary notwithstanding, no consent shall be required on an assignment to a Public Agency with the power of eminent domain; provided, such Public Agency expressly assumes the obligations of this Agreement and provided, further, that if said Public Agency assumes only a portion of the obligations of this Agreement, Retailer shall remain obligated for the remainder, or in the event Retailer shall sell, transfer, or convey any part or parts or its recycled water system to any entity, public or private, Retailer may assign to the purchaser thereof a portion of Retailer's rights, privileges and obligations hereunder and, in the event of any such assignment Retailer shall be relieved of such portion of such obligations of Retailer so assigned if, following such sale, transfer, or conveyance, Wholesaler shall commence to furnish recycled water to such entity, or Wholesaler under a agreement with such entity existing prior to such sale, transfer, or conveyance increase the amount of recycled water delivered to such entity in order to meet in part the increased recycled water requirements of such entity resulting from such sale, transfer, or conveyance.

10. **Remedies** - By reason of the specialized nature of the recycled water service to be rendered, and for the further reason that extent of any damage caused to either Party by other by reason of any breach of this Agreement may be extremely difficult to determine, it is agreed by the Parties hereto that an action for damages is an inadequate remedy for any breach, and that specific performance, without precluding any other remedy available in equity or at law, will be necessary to furnish either Party hereto with an adequate remedy for the breach hereof.

11. **Indemnification** - Wholesaler shall save Retailer, its officers, agents and employees, free and harmless from any and all cost liability, damages or health-related claims arising out of any act or omission to act, including any negligent act, by Wholesaler, its officers, agents or employees arising out of the Wholesaler's performance of its obligations under this Agreement. Retailer shall save Wholesaler, its officers, agents and employees, free and harmless from any and all cost liability, damages or health-related claims arising out of any act or omission to act, including any negligent act, by Retailer, its officers, agents or employees arising out of the Retailer's performance of its obligations under this Agreement.

12. **Reasonable Cooperation** - If any third Party claim is made against either or both Parties hereto relating in any way to the receipt, distribution or use of recycled water hereunder, each Party agrees to provide reasonable cooperation to the other Party under the circumstances in the defense of such claims in any proceeding, including without limitation, arbitration, judicial proceedings or administrative proceedings.

13. **Integrated Agreement** - There are no understandings or agreements except as herein expressly stated.

14. **Dispute Resolution** - Any controversies between Parties regarding the construction or application of this Agreement, and claims arising out of this contract or its breach, shall be submitted to mediation within 30 days of the written request of one party after the service of that request on the other party. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Santa Clara County appoint a mediator. The mediation meeting shall not exceed one day (eight hours). The Parties may agree to extend the time allowed for mediation under this Agreement. The costs of mediation shall be borne by the parties equally. Mediation under this section is a condition precedent to filing an action in any court.

15. **Governing Law** - This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Wholesaler has caused this Agreement to be executed and Retailer has caused these presents to be executed hereof on the day and year first herein above written, by it duly authorized officer.

CITY OF SAN JOSE, CALIFORNIA

APPROVED AS TO FORM:

MOLLIE J. DENT
Senior Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

By: Patricia L. O'Hearn
PATRICIA O'HEARN
City Clerk

CITY OF SANTA CLARA, CALIFORNIA

APPROVED AS TO FORM:

For ROLAND D. PFEIFER
Assistant City Attorney

By: Judy Nadler
JUDY NADLER
Mayor

ATTEST:

J. E. BOCCIGNONE
City Clerk

By: Jennifer Sparacino
JENNIFER SPARACINO
City Manager

Address:
1500 Warburton Ave.
Santa Clara, California 95050
Telephone: (408) 984-3000
Facsimile: (408) 241-6771

Exhibits:

Exhibit A = Retailer Service Area
Exhibit B = Recycled Water Delivery Schedule
Exhibit C = Typical Point-of-Connection Detail

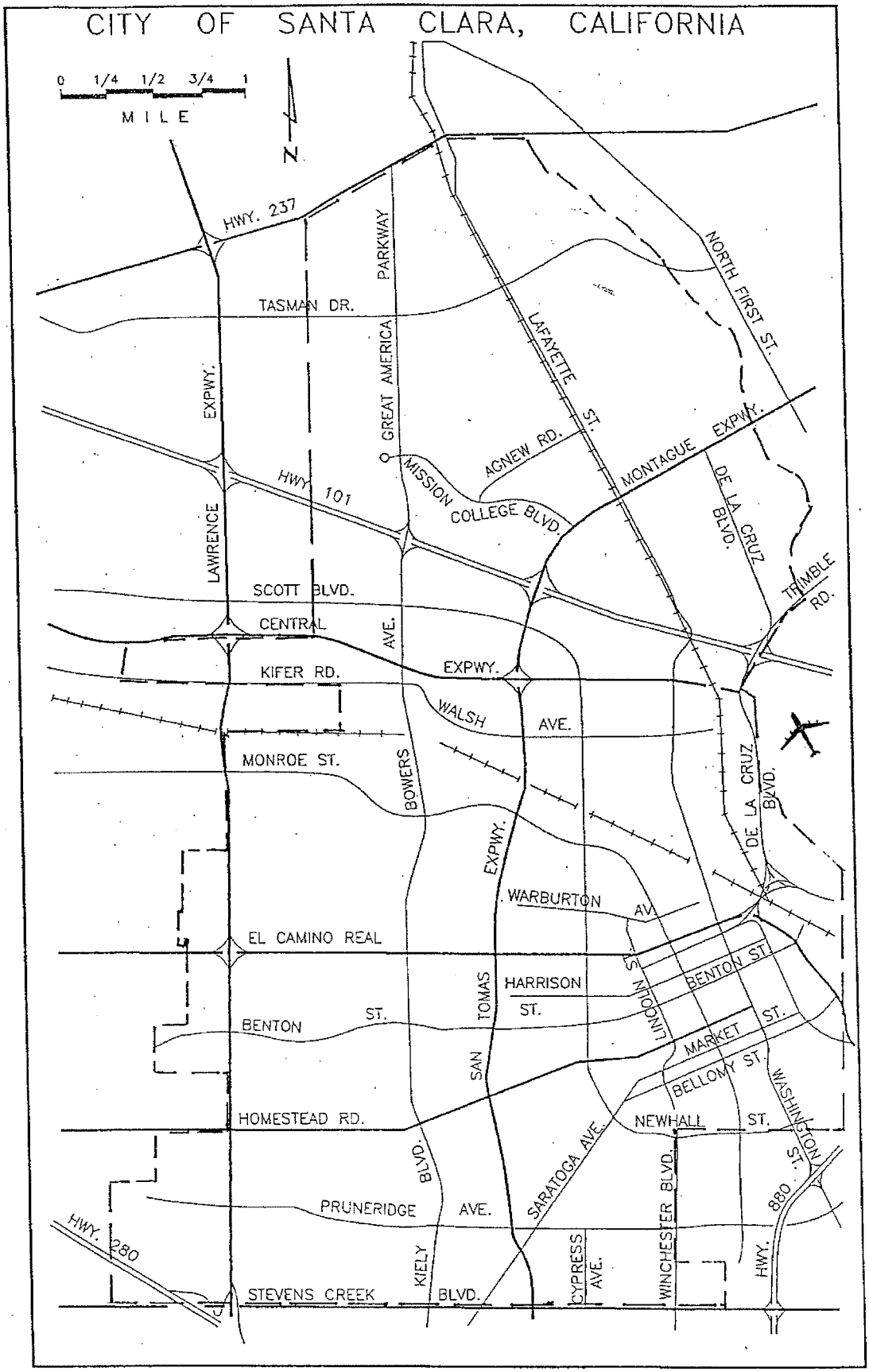


EXHIBIT A
UTILITY SERVICE AREA

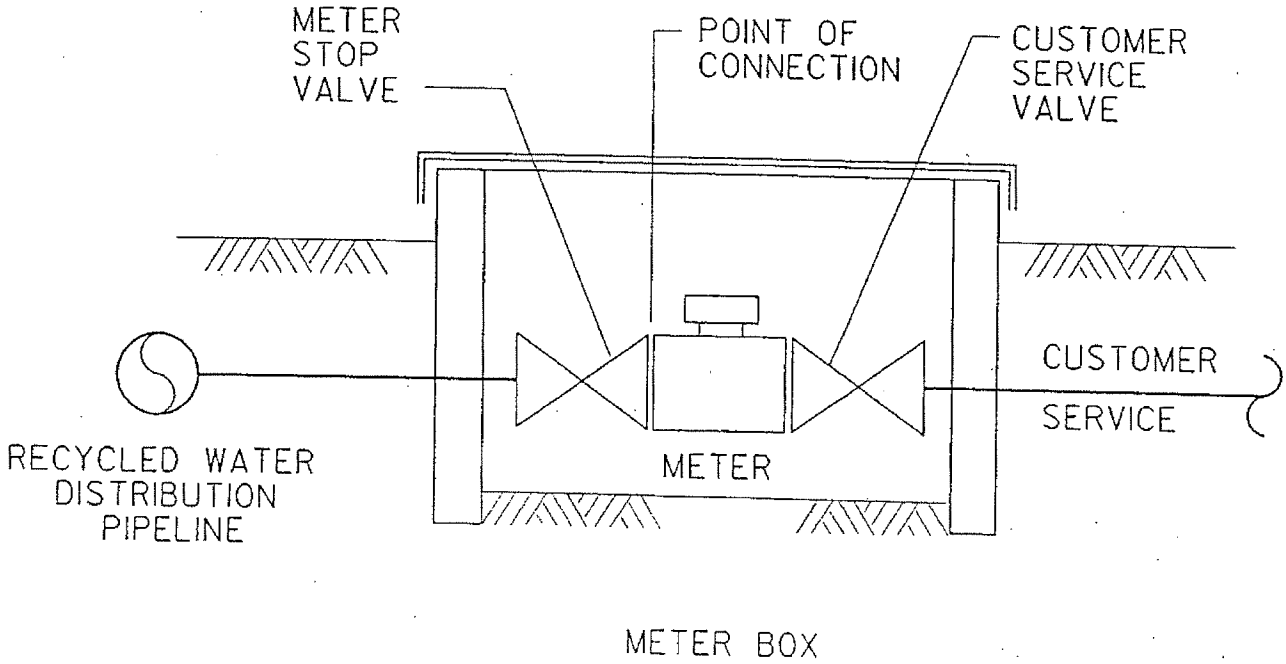
EXHIBIT B

CITY OF SANTA CLARA
PROPOSED MONTHLY RECYCLED WATER DELIVERY SCHEDULE
(In Acre-Feet)

MONTH	PROJECTED MONTHLY SCHEDULES				
	1997-1998	1998-1999	1999-2000	2000-2001	2001-2007
JULY		263	263	263	263
AUGUST		263	263	263	263
SEPTEMBER		193	193	193	193
OCTOBER		210	210	210	210
NOVEMBER		70	70	70	70
DECEMBER	53	70	70	70	70
JANUARY	39	53	53	53	53
FEBRUARY	39	53	53	53	53
MARCH	92	123	123	123	123
APRIL	79	105	105	105	105
MAY	131	175	175	175	175
JUNE	131	175	175	175	175
ANNUAL ACRE-FEET	565	1752	1752	1752	1752

EXHIBIT C

Wholesaler-Retailer Point of Connection Detail



NOTE: RECYCLED WATER METER AND CUSTOMER SERVICE VALVE TO BE PROVIDED AND INSTALLED BY RETAILER.

APPENDIX D

The proposed Project water demand and impacts were calculated using the following data:

1) 1,862,100 square feet of office space at 0.140 gpd/square foot = 260,694.0 gpd = 95,153,310.0 gpy = 292.0 acre ft/yr

2) 138,000 square feet of retail space at 0.076 gpd/square foot = 10,488.0 gpd = 3,828,120.0 gpy = 11.7 acre ft/yr [a]

3) 158,000 square feet of irrigation at 0.077 gpd/square foot = 12,166.0 gpd = 4,440,590.0 gpy = 13.6 acre ft/yr [b]

4) 503,900 square feet of irrigation served by recycled water at 0.077 gpd/square foot = 38,800.3 gpd = 14,162,109.5 gpy = 43.5 acre ft/yr[b]

5) Total = 117,584,129.5 gpy = 360.9 acre ft/yr

6) Average Historical Use: 2005-2013 = 46.8 acre ft/yr

7) Increase Water Demand for Project =
Total Projected Demand (360.9 acre ft/yr) - Historical Use (46.8 acre ft/yr) = 314.1 acre ft/yr

[a] 0.076 gallons/sf/day is the estimate that is based on information from BKF Engineers and is consistent with the City's existing factor for retail space.
[b] 0.077 gallons/sf/day is the estimate that is based on information from Department of Water Resources – Water Budget Workbook – Calculation of Maximum Applied Water Allowance (MAWA) based on Model Water Efficiency Landscape Ordinance

Project	Address	Number	Units	Use	Water Demand Rate unit/day	Water Demand gallons/year	Water Demand (acre feet/year)	Existing Demand (acre feet/year)	Demand Delta (acre feet/year)	Recycled water available	Anticipated year built	Calendar year soonest	Calendar year latest
3515 Monroe St.	3515 Monroe St.	825	Dwelling units	Residential	141,075.0 gal/day	51,492,375.00	158	6.1	179.6	No	1-2 years	2015	2017
		14,929	sq. ft.	Amenity Space	1,134.60 gal/day gal/day	414,130.50	1.3						
		15,200	sq. ft.	Retail	1,155.20 gal/day	421,648.00	1.3						
		20,000	sq. ft.	Market	4,800.00 gal/day	1,752,000.00	5.4						
		5,000	sq. ft.	Restaurant	5,200.00 gal/day	1,898,000.00	5.8						
		161,483	sq. ft.	Irrigation	12,434.20 gal/day	4,538,479.70	13.9						
Santa Clara Square	2465-2727 Augustine 3333 Bowers	138,000	sq. ft.	Retail	10,488.00 gal/day	3,828,120.00	11.7	46.8	314.1	Yes	1-2 years	2014	2015
		1,862,100	sq. ft.	Office	260,694.00 gal/day	95,153,310.00	292.0						
		503,900	sq. ft.	Irrigation (Recycled)	38,800.30 gal/day	14,162,109.50	43.5						
		158,000	sq. ft.	Irrigation (Potable)	12,166.00 gal/day	4,440,590.00	13.6						

* Water demand for the table has been updated for office space per average daily flow of 0.140 gpd/sf versus the estimated peak water demand at 95% (0.482 mgd)

Project	Address	Number	Units	Use	Water Demand Rate unit/day	Water Demand gallons/year	Water Demand (acre feet/year)	Existing Demand (acre feet/year)	Demand Delta (acre feet/year)	Recycled water available	Anticipated year built	Calendar year soonest	Calendar year latest
5403 Stevens Creek Blvd.	5403 Stevens Creek Blvd.	2	Office Buildings	Office	79,451.8 gal/day	28,999,907	89	4.2	84.8	No	1-3 years	2013	2015
3000 Bowers Avenue*	3000 Bowers Avenue	300,000	sq. ft.	Office	54,000.00 gal/day	19,710,000.00	60.5	0.7	143.99	No	1-3 years	2013	2015
		92,925	sq. ft.	Irrigation	75,176.30 gal/day	27,439,358.60	84.2						
2200 Lawson Lane*	2200 Lawson Lane	300,000	sq. ft.	Office	54,000.00 gal/day	19,710,000.00	60.5	5.8	141.09	No	1-3 years	2014	2016
		95,300	sq. ft.	Irrigation	77,097.70 gal/day	28,140,660.50	86.4						
4301, 4401, 4551 Great America Pkwy	4301, 4401, 4551 Great America Pkwy	718,000	sq. ft.	Office	129,240.0 gal/day	47,172,600.00	144.8	1.9	350.6	Yes	1-5 years	2014	2016
		229,239	sq. ft.	Irrigation	185,454.40 gal/day	67,690,838.10	207.7						
3700 El Camino Real	3700 El Camino Real	475	Dwelling units	Residential	142,500.0 gal/day	52,012,500.00	159.6	1.2	286.3	No	2 years	2016	2019
		86,388	sq. ft.	Retail	6,565.5 gal/day	2,396,403.10	7.4						
		133,000	sq. ft.	Irrigation	107,597.0 gal/day	39,272,905.00	120.5						
3333 Scott Blvd.	3333 Scott Blvd.	1,358,647	sq. ft.	Office	190,211 gal/day	69,427,015	213.1	9.5	240.1	Yes	1-3 years	2015	2017
		284,000	sq. ft.	Irrigation	24,140 gal/day	8,811,100	27						

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MB-1

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Electric Utility

Subject: Approval of a Call Agreement with SBW Consulting, Inc., and Call Number 14-1 for Professional Services for the CoolerMiser Direct Install Third Party Energy Efficiency Program

EXECUTIVE SUMMARY:

In accordance with Public Utilities Code (PUC) Section 385 covering Public Benefits Charge, and the City's Public Benefits Program Policy Statement adopted by Council on May 12, 1998, staff has developed a wide range of cost-effective energy efficiency and renewable energy programs for customers. As a part of that program portfolio, Silicon Valley Power (SVP) periodically issues an RFP for third party energy efficiency programs to supplement its ongoing programs. As a result of the most recent RFP, issued in December 2013, the CoolerMiser Direct Install Program, to be administered by SBW Consulting, Inc., has been selected. Entering into a Call Agreement and Call No. 14-1 with SBW Consulting, Inc. will deliver an energy efficiency measure that reduces the energy consumption of refrigerated cases stocked with non-perishable items to all commercial and industrial customers with this equipment. The program is designed to provide full incentives to offset the costs of the equipment, yet still fall well within the cost effectiveness goals for SVP. A copy of the Call Agreement and Call No. 14-1 is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

This program is already offered in multiple markets across the western United States, and has proven to be an effective way to motivate businesses and help them install energy efficiency measures at low or no cost to the customer. Significant savings can be found in the area of refrigeration; therefore customers who participate in this program will use energy more efficiently. The City of Santa Clara is required by state law to spend 2.85% of electric revenues on energy efficiency, renewable energy, low income, and electric research projects. This program helps to achieve that requirement.

ECONOMIC/FISCAL IMPACT:

The total cost of Call No. 14-1 shall not exceed $101,250.00. Sufficient funds are available in Electric Department Public Benefits Charge account 191-1312-87940-[I]9695-[F]94100.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, a Call Agreement with SBW Consulting, Inc., and Call No. 14-1, in an amount not to exceed $101,250.00, for the CoolerMiser Direct Install Program third party energy efficiency program.

John C. Roukema

John C. Roukema, Director of Electric Utility

Certified as to Availability of Funds:

191-1312-87940 $ 101,250.00

Gary Ameling

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Shula A. Jenkins

for Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:

1) ***Call Agreement with SBW Consulting, Inc.***
2) ***Call 14-1 with SBW Consulting, Inc.***

Insurance No. S200001595

CALL AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND SBW CONSULTING, INC. forThird Party Energy Efficiency Program Implementation Services

PREAMBLE

This call agreement ("Agreement") is made and entered into in the City of Santa Clara, California, on this ___ day of ___ _____2014 ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation, with its principal place of business located at 1500 Warburton Avenue, Santa Clara, California 95050 ("City") and SBW Consulting, Inc., a Washington corporation, with its principal place of business located at 2820 Northup Way, Suite 230, Bellevue, Washington 98004 ("Contractor"). City and Contractor may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

Whereas:

A. Contractor agrees to provide certain professional services to City on an on-call basis;

B. Contractor has the ability and desire to provide the quality and type of professional services which meet the objectives and requirements of City as set forth in this Agreement; and,

C. The Parties have specified in this Agreement the terms and conditions under which such services will be provided to and paid for by the City.

In consideration for the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

1.1 To the extent possible, the professional services to be provided under this Agreement shall be performed in the City of Santa Clara and the services shall be described in detail by the Contractor and submitted in a written proposal to the City ("Services"). The Contractor's final proposal will be included as an exhibit entitled, "Scope of Services" attached to a subsequent agreement between the Parties referred to in this Agreement as a "Call" or a "Call for Services." Each Call will incorporate the terms of this Agreement by reference and must be signed by both Parties. Contractor agrees to provide professional services to the City as specified in each respective Call, to the extent funds have been authorized by the City.

1.2 No Services shall be performed or paid for under this Agreement except as specifically set forth and required in a written Call. No compensation may be sought under this Agreement for work performed prior to the issuance of a Call or for work to be performed or paid for under another contract. No compensation shall be paid in excess of the maximum dollar amount indicated in each respective Call for Services.

1.3 The Parties acknowledge that on the Effective Date of this Agreement, they are unaware of the details of all of the services which may be needed by City or provided by Contractor during the term of this Agreement. The Parties intend to specify the details and value of such Services in a subsequent Call, if any. This Agreement does not require that any Call(s) be signed. The Parties intend to provide the details of the contractual relationship between the Parties in this Agreement, so that by incorporating the terms of this Agreement in the Call(s), the Call may be brief and address the specific Services to be provided, the details of the time when the Services are to be provided and the schedule and amount the Contractor is to be paid for such Services.

2. PAYMENT

2.1 **Not to Exceed Maximum Amount.** The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Call shall not exceed the maximum dollar amount specified in the Call. Contractor shall complete all Services contained within the scope of a Call regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Contractor shall not perform any Services outside the scope of the Call without prior written authorization when the amount billed for under a Call exceeds the maximum dollar authorized amounts in the Call.

2.2 **Monthly Invoices.** Unless provided otherwise in a particular Call, payment to Contractor shall be in accordance with the procedures in this paragraph 2.2 and in paragraph 2.3. On a monthly basis, Contractor shall prepare an invoice which includes an itemization of all time spent based on the percent of Services complete, as well as any Authorized Expenses incurred (i.e., Out-of-Pocket Costs, Sub-contracted Services and/or Extraordinary Expenses).

2.2.1 If a particular Call directs that an invoice be presented in a format of a time sheet rather than as a percentage of Services completed, the itemization on each monthly invoice shall set forth the amount of time (recorded in quarter hours), the name of the employee performing the task and a description of each task performed. After setting forth the time spent on a daily basis, the itemization will provide a summary, at its end, of the total hours spent by each employee for the month, the hourly rate charged for that employee, and the total value of the service rendered by that employee for the month. The amount billed for Services shall then be determined by adding the value for the Services rendered by each employee for that particular month.

2.2.2 All monthly invoices shall also include a written itemization of the Authorized Expenses incurred, if any, with a detail listing the cost and source of such expenses and when they were incurred.

2.2.3 Contractor shall maintain documentation of such time and costs for City inspection for a period of three (3) years from the date of termination of this Agreement.

2.2.4 Within thirty (30) days of receipt of an itemized written invoice from the Contractor, City shall pay Contractor the amount billed for Services performed and authorized costs incurred under the Call during that billing period.

2.3 **Authorized Expenses.** The amount billed for Services shall be determined as set forth in paragraph 2.2 above plus the following amounts, if allowed under the Call:

2.3.1 **"Out-of-Pocket Costs".** Contractor's Out-of-Pocket Costs are those expenditures made by Contractor, other than employees' salaries and payment for Services of retained specialists, which are directly chargeable to the Services performed and which would not otherwise have been incurred by Contractor. Unless otherwise provided, the Out-of-Pocket Costs must be approved in writing in advance by City and may be billed to the City and reimbursed to the Contractor only as specifically authorized and set forth in each respective Call. Authorized Out-of-Pocket Costs shall be billed without additional markup or administrative charge;

2.3.2 **Per Diem.** A Call will state whether or not it includes an estimate for anticipated travel expenses. If the Call does not include an estimate for anticipated travel, then the provisions of this paragraph shall apply. A Party's travel expenses include airfare, rental car, or mileage, lodging and meals. The Party who is receiving the services pursuant to a particular Call, is the Reimbursing Party. Prior to incurring any charge for travel, the Party planning to travel ("Traveling Party") shall (1) confirm that the Reimbursing Party is available for meetings on the proposed dates and (2) provide (either verbally or by facsimile) a price quote to the Reimbursing Party for the anticipated airfare prior to the charge being incurred, the Reimbursing Party shall either verbally or by facsimile confirm that the airfare may be incurred; in the event that the Reimbursing Party verbally confirms that the airfare may be incurred, the Traveling Party *shall* confirm in writing (prior to incurring the charge) that the Reimbursing Party has agreed to the charge. All travel expenses shall be reimbursed at cost, with no mark-up. Hotel rooms shall not exceed a cost of $125 per night unless otherwise agreed by Reimbursing Party. Airfare and car rentals shall be reimbursed at economy class, unless economy class is unavailable through no fault of the booking party. Mileage, if applicable, shall be reimbursed in accordance with the current IRS guidelines for mileage reimbursement. Reasonable attempts shall be made to

make plane reservations in advance in order to take advantage of lower fares. In the event that travel plans must be canceled or re-scheduled due to the fault of the Reimbursing Party, then the Reimbursing Party shall pay for any costs associated therewith; if the travel is canceled or re-scheduled due to the fault of the Traveling Party, then the Traveling Party shall bear the expense. Invoices for travel expenses shall be supported by receipts, and shall be reimbursed in accordance with paragraph 2.2.1. Meals, if reimbursed, shall not exceed fifty dollars ($50) per day.

2.3.3 **Any authorized "Sub-contracted Services" incurred by Contractor.** Authorized Sub-contracted Services are services provided by a retained specialist or sub-contractor and may be billed to City only if specifically described and authorized in a Call. (Retained specialists and sub-contractors shall include individuals or organizations offering qualified special services to City who are particularly skilled in one or more fields and who may be occasionally employed by the Contractor to fill the need for special or unusual services. Unless otherwise provided, the cost of furnishing such special services must be approved in writing in advance by City and the costs billed to City and reimbursed to the Contractor shall be only the actual charges of the retained specialist or sub-contractor, without additional markup or administrative charge); and\or,

2.3.4 **Any other authorized "Extraordinary Expenses" incurred, if any, as set forth in the Call.** Authorized Extraordinary Expenses shall be billed without additional markup or administrative charge.

2.4 **Retainer or Flat Fee for Services.** The Parties to this Agreement may, from time to time, determine that payment for a certain Scope of Services set forth in a Call pursuant to this Agreement should be made to Contractor on a retainer or flat fee for Services basis ("Stipulated Fee"). If the Parties so agree, then the provisions of this paragraph and the provisions of paragraph 2.2.1 shall apply, unless the Call provides otherwise. The Call shall set forth the maximum monthly or annual fee agreed to by the Parties as it relates to any Agency Fee or to any Out-of-Pocket Costs, and Contractor shall not exceed the amount(s) agreed to without written approval of City. The maximum Agency Fee agreed upon by the Parties is deemed to fully compensate Contractor for all work necessary for Contractor to complete the Scope of Work set forth in a Call.

3. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives, or agents shall have the right during the term of this Agreement, and for three (3) years from the date of final payment under this Agreement, to audit Contractor's books and records for the purpose of verifying any and all charges made by Contractor in connection with Contractor's compensation under Calls made pursuant to this Agreement, including termination of Contractor's Services. Contractor agrees to maintain sufficient books and records in accordance with generally accepted

accounting principles to establish the correctness of all charges submitted to City. Any expense not so recorded shall be disallowed to Contractor.

4. PROSECUTION OF WORK

Contractor shall perform the Services required under this Agreement and the Call(s) made pursuant to it in an efficient and expeditious manner. Contractor shall commence work on the Effective Date specified in the applicable Call. Contractor is responsible for any delays caused by Contractor, its agents or subcontractors, or caused by factors directly or indirectly under its control. No extension of time for performance shall be given for such delays.

5. QUALIFICATIONS OF CONTRACTOR; STANDARD OF WORKMANSHIP

Contractor represents that it has sufficient qualified personnel to furnish the Services described under this Agreement and that the Services will be furnished in accordance with generally accepted professional standards and practices in the industry.

The work furnished to the City pursuant to any of the Calls under this Agreement shall be of a quality acceptable to the City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct. The minimum standard of appearance, organization and content of the documents shall be that used by the City for similar projects.

6. SUSPENSION OR TERMINATION

City may suspend or terminate this Agreement or any or all work covered under any Call under this Agreement at any time upon thirty (30) days' prior written notice. Contractor may terminate this Agreement as set forth in paragraph 6.4. Said termination or suspension shall be effective as of the thirtieth day after the date of the notice ("Effective Date of Termination"). This Agreement, and any portion of the Scope of Services described in any Call including but not limited to any specific task, project, study, advertisement or campaign, may be terminated by the City upon written notice delivered personally or by registered mail or equivalent mail or delivery service which provides for an office signature of receipt. With regard to termination of any portion of the Scope or any specific task, termination will be effective immediately, unless economic or practical considerations result in the Parties mutually agreeing to a specific termination date.

6.1 If such termination is due to the fault of Contractor, and if City agrees to make payment for all work and Services satisfactorily rendered up to the Effective Date of Termination, payment will be made within thirty (30) days of receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City may deduct from such payment the amount of actual damage, if any, sustained by City by virtue of the failure to perform the Services or for breach of this Agreement by Contractor.

6.2 If such termination is not due to the fault of Contractor, then City agrees to make payment for all work and Services rendered up to the Effective Date of Termination within thirty (30) days from receipt of a statement for work and Services performed. Contractor shall immediately take proper steps to effect City's instructions, canceling any commitments previously authorized by City, if City so requires. City shall reimburse Contractor for any costs, expenses or service charges incurred by Contractor as a result of canceling previously authorized outsourced services.

6.3 Upon termination of this Agreement, Contractor shall transfer, assign and make available to City or City's representative, all property and materials in Contractor's possession belonging to and paid for by City.

6.4 Contractor may suspend or terminate this Agreement upon completion of work on all outstanding Call(s). Contractor may terminate work under a particular Call if the City is in default of the terms of this Agreement or any Call.

7. AVAILABILITY OF FUNDS

City represents that adequate funds will be available to make payments for Services received as required by each Call.

8. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

In performing work under this Agreement, Contractor is not an agent or employee of City, but is an independent contractor for professional Services with full rights to manage its employees subject to the requirements of the law. All persons employed by Contractor in connection with this Agreement will be employees of Contractor and not employees of City in any respect.

9. AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

10. HOLD HARMLESS/INDEMNIFICATION

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost and/or expense or damage ("Claim"), including all costs and reasonable attorney's fees in providing a defense to any such Claim which arises from Contractor's acts, errors or omissions with respect to, or in any way connected with, the prosecution of the work performed by Contractor pursuant to this Agreement.

11. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall be

three (3) years, beginning on the Effective Date and terminating three years later. However, this Agreement shall be deemed extended for such time as is necessary for Contractor to complete work on any Call which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete Call(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such Call shall remain in full force and effect under this Agreement, subject to the terms of such Call.

12. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any period following the termination date as set forth in this Agreement, Contractor shall purchase and maintain in full force and effect the following insurance policies:

12.1 commercial general liability (including bodily injury and property damage);

12.2 business automobile liability insurance;

12.3 worker's compensation employer's liability; and

12.4 if applicable, professional liability insurance.

Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts and with the required endorsements, certificates of insurance and coverage verifications as defined in Exhibit C, attached and incorporated by this reference. Contractor shall make its best effort to secure, and thereafter maintain in effect, such insurance policies. In the event that any required insurance policy expires or is terminated for any reason, Contractor agrees to replace the policy prior to any lapse in coverage. In the event any policy required under this Agreement is allowed to lapse, City may, in its sole discretion, elect to purchase the required insurance policy and the cost of such policy shall be charged to Contractor or withheld from the payments due to Contractor from City under this Agreement.

CONTRACTOR AGREES THAT, PRIOR TO EXECUTION OF THIS AGREEMENT, CONTRACTOR SHALL PROVIDE ITS INSURANCE BROKER WITH A COPY OF THIS PAGE OF THE AGREEMENT AS WELL AS WITH A COMPLETE COPY OF EXHIBIT C, AND WILL OBTAIN ASSURANCE FROM ITS CARRIER THAT ITS INSURANCE CARRIER WILL PROVIDE: (1) THE EXACT COVERAGES IN THE REQUIRED DOLLAR AMOUNTS STATED THEREIN, (2) AN ENDORSEMENT NAMING THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES AND OFFICERS AS ADDITIONAL INSUREDS ON THE CGL AND BAL, AND (3) AN ACCORD EXPLICITLY STATING THAT "THE CITY OF SANTA CLARA, ITS COUNCIL, EMPLOYEES, AND OFFICERS ARE HEREBY ADDED AS ADDITIONAL INSUREDS IN RESPECT TO ALL LIABILITIES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF WORK UNDER THIS AGREEMENT" AS REQUIRED BY PARAGRAPH 2 OF EXHIBIT C.

13. OWNERSHIP OF DATA AND INFORMATION

City shall own any written reports or other items deemed deliverables by the respective Call, as well as any documents, data or other information supplied by City to Contractor during the course of this Agreement. Contractor shall deliver said data and information to City whenever requested to do so, but in any event within thirty (30) calendar days of the completion of the task. All material, including information developed on computer(s), which shall include, but not be limited to, data, artwork, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, advertisements, pamphlets, mailers and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City whether or not used, so long as that material has been paid for by the City. City shall not be limited in any way or at any time in its use of said material. City acknowledges that it shall not own any of Contractor's proprietary, confidential or trade secret information, such as formulas, patterns, compilations, programs, devices, methods, techniques or processes through which Contractor derives independent economic value because the foregoing item[s] is not generally known to the public and is the subject of reasonable efforts to maintain its secrecy.

14. CONFIDENTIALITY OF DATA AND MATERIAL

14.1 All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Such data information or reports may be viewed by or distributed to third parties only after prior written approval of City. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

14.2 Contractor shall take reasonable efforts to safeguard any and all City property entrusted to Contractor's custody or control; however, Contractor shall not be liable to City for any loss, damage, or destruction of any such property unless Contractor's actions constitute negligence or reckless disregard of City's property.

14.3 A Party disclosing information to the other which it considers to be Confidential Information, shall clearly label that information "Confidential" before disclosing it to the other Party. Confidential Information means information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas or coal reserve information, rates, loads, energy requirements,

certain sales market information, research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, recordings, electronic or oral data, computer programs, logic diagrams, component specifications, drawings or other media. Only that information disclosed by a Party and clearly designated in writing as Confidential Information prior to its disclosure shall be deemed to be Confidential Information. Verbal information that is intended to be treated as Confidential Information shall be described in writing and identified as Confidential Information.

14.4 Contractor acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. City acknowledges that Contractor may submit information to City that Contractor considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Contractor acknowledges that City may submit to Contractor information that City considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical but within three (3) days of receipt of the request, shall notify the Disclosing Party that such request has been made by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

14.5 The Receiving Party may cooperate with the Disclosing Party in any efforts to prevent release of the Confidential Information; however, the Receiving Party shall not be required to expend any monies in excess of the cost of notifying the Disclosing Party by telephone, facsimile and/or mail of the pendency of a demand for the Confidential Information. So long as the Receiving Party complies with the provisions of notification set forth in this Agreement, the Receiving Party shall not be liable for, and Customer and City hereby release each other from, any liability for any damages arising from any requirement under the law that the Receiving Party release Confidential Information to a Requestor, and such release includes the officers, commissioners, employees, agents, council members, and directors, as those terms may apply to each Party hereto, without limitation.

14.6 The Receiving Party may, at its sole expense, institute, or intervene in any proceeding, in order to protect the Confidential Information from disclosure, and if the Disclosing Party requests and agrees in writing to indemnify the Receiving Party from any expense or liability for expenses, the Receiving Party may cooperate actively in any such action or proceeding; provided, however, that the Receiving Party shall have no duty to the Disclosing Party to actively cooperate, notwithstanding an offer by the Receiving Party to provide a complete indemnity.

15. CORRECTION OF WORK

The performance of Services by Contractor shall not relieve Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to City.

16. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050,
or by facsimile at (408) 244-2990

and to Contractor addressed as follows:

SBW Consulting, Inc.
2820 Northup Way, Suite 230
Bellevue, WA 98004
or by facsimile at (425) 822-8119

17. CHANGES

City may, from time to time, request changes in the "Scope of Services" to be performed pursuant to a Call issued under this Agreement. Such changes, including any increase or decrease in the amount of Contractor's compensation, which are mutually agreed upon by and between City and Contractor, shall be incorporated in written amendments to the Call, or included in a subsequent Call.

18. CONTRACT FOR ADMINISTRATIVE SERVICES

To the extent that this Agreement is a contract authorizing Calls to be made for Administrative Services, the City Council entered into such Agreement upon the recommendation of the City Manager pursuant to Section 1108 of City's Charter. The policy decision with respect to the Services to be provided under this Agreement was made exclusively by the City Council.

19. SUB-CONTRACTING AND ASSIGNMENT

Except as specifically provided in this Agreement, the City intends that the work described in each Call must be performed by the Contractor and not by a subcontractor or agent of the Contractor. Contractor shall not assign any interest in this Agreement, or any Call issued pursuant to this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without prior written approval of City. Inclusion of a subcontractor in a proposal attached to a Call, once signed by the City, constitutes written approval.

However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement or any incomplete Call. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

20. OTHER AGREEMENTS

This Agreement shall not prevent either Party from entering into similar agreements with others.

21. TOTALITY OF AGREEMENT

This Agreement embodies the entire Agreement between City and Contractor and all the terms and conditions agreed upon by the Parties to this Agreement. No other understanding, agreements, conversations, oral or otherwise, with any officer, agent, or employee of the City prior to the execution of this Agreement, regarding the subject matter of this Agreement shall affect or modify any of the forms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding on either Party to this Agreement.

22. SERVICE WARRANTY

Contractor warrants that Services provided hereunder shall conform with the generally accepted professional practices and standards appropriate to the nature of the Services rendered, that the personnel furnishing said Services shall be qualified to perform the Services assigned to them and that the recommendations, guidance and performance of such personnel shall meet the standard of care normally practiced by engineers or contractors performing the same or similar Services. Contractor shall be required to correct, at no expense to City, all deficiencies in the performance of the contract service that results from Contractor's failure to observe and adhere to the above warranty and which are detected within one (1) year from the date of completion of the Services. Work performed under this warranty shall also be warranted for a one (1) year period from the date of completion of such work. Contractor shall be required to reimburse City for all misexpenditure of funds resulting from Contractor's deficient performance of its Services.

23. DISPUTE RESOLUTION

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties.

23.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved, by the project managers of each Party, either Party may upon written notice to the other request that the matter be referred to senior management officials within each respective organization with express authority to resolve the problem or issue. Such representatives shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of such written notice. If the parties cannot reach a mutually agreeable resolution, then the dispute or issue shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.

23.2 **Notice.** A Party with claims arising under this Agreement shall, within thirty (30) days of knowledge of said claim, begin the process of exhausting all administrative remedies, as well as any other administrative remedies required by law. If the final decision or outcome of any administrative proceeding is unacceptable to a Party, then within thirty (30) days of the date of that final decision, the dissatisfied Party shall give written notice (certified mail-return receipt requested) to the other Party of the issues it deems outstanding that must be submitted to mediation (Request for Mediation).

23.3 **Mediation.** Any controversies between City and Contractor regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, except those for which the appropriate remedy should be injunctive relief shall be mediated within sixty (60) days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.

23.4 **Mediator.** Within twenty (20) days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators affiliated with the Judicial Arbitration and Mediation Service ("JAMS") and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the San Jose office of JAMS, requesting that JAMS appoint a mediator from the enclosed list. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

23.5 **Costs.** The costs of mediation shall be borne by the Parties equally.

23.6 **Discovery.** If, during any dispute between the Parties, a demand is made by Contractor for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Contractor.

23.7 **Condition Precedent to Filing Suit.** Except as provided in Article 23.3, mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23.8 **Work Through Disputes.** If the City and the Contractor are unable to reach agreement on disputed work, the Contractor shall nevertheless proceed with the disputed work, and Payment therefore shall be as subsequently determined pursuant to this Article.

24. CAPTIONS

The captions of the various paragraphs of this Agreement are for convenience or record only, and shall not be considered or referred to in resolving questions or interpretations.

25. APPLICABLE LAW

Any dispute regarding this Agreement, including without limitation, its validity, interpretation, performance, enforcement and damages shall be determined in accordance with the laws of the State of California without regard to California's choice of law principles.

26. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

27. NO PLEDGING OF CITY'S CREDIT

Under no circumstances shall Contractor have the authority or power to pledge the credit of the City of Santa Clara, or to incur any obligation in the name of the City without City's prior written agreement or confirmation. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor or its subcontractors under this Agreement. Contractor agrees to obtain City's approval of all expenditures in connection with any materials to be purchased, projects to be performed, advertising to be placed, work to be "outsourced" or other items or Services which will or might be charged to the City. Such approval, if verbal, shall be confirmed by the City in a written letter sent via facsimile and U.S. mail to Contractor in accordance with the terms of this Agreement.

28. USE OF CITY NAME OR LOGO

Contractor shall not use City of Santa Clara's or Silicon Valley Power's name, insignia, trademark, logo or distribute exploitative publicity pertaining to the Services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

29. MONITORING AND EVALUATION OF SERVICES

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

30. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

31. SEVERABILITY CLAUSE

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

32. WAIVER

Waiver by a Party of any one or more of the conditions of performance under this Agreement shall not be construed as a subsequent waiver(s) of that condition or of any other condition of performance under this Agreement. No delay in exercising, partial exercise, or complete failure to exercise any right, power, or privilege under this Agreement shall operate as a waiver.

33. CONFLICT OF INTEREST

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person

associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

34. CONSTRUCTION AND INTERPRETATION OF AGREEMENT

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular party, and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or in the resolution of disputes.

35. COMPLIANCE WITH ETHICAL STANDARDS

As a condition precedent to entering into this Agreement, Contractor shall:

35.1. Read Exhibit A, entitled "ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA" incorporated by this reference; and,

(continued on page 16 of 16)

///

///

///

///

///

///

35.2. Execute the affidavit included in Exhibit B, entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS" incorporated by this reference.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of City and Contractor that this Agreement shall become operative on the Effective Date first set forth in the Preamble, above.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SBW CONSULTING, INC.
a Washington Corporation

By:
BING TSO
Title: Principal
Address: 2820 Northup Way, Suite 230
Bellevue, WA 98004
Telephone: (425) 827-0330
Fax: (425) 822-8119
Email Btso@sbwconsulting.com

"CONTRACTOR"

CALL AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND SBW CONSULTING, INC.

EXHIBIT A

ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

Termination of Agreement for Certain Acts

A. City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor[1] does any of the following:

   a. Is convicted[2] of operating a business in violation of any Federal, State or local law or regulation;

   b. Is convicted of a crime punishable as a felony involving dishonesty[3];

   c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or sub-contract;

   d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City Contractor or sub-contractor; and/or,

   e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can

---

[1] For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

[2] For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

[3] As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

B. City may also terminate this Agreement in the event any one or more of the following occurs:

1. If City determines that Contractor no longer has the financial capability[4] or business experience[5] to perform the terms of, or operate under, this Agreement; or

2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with city, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.

C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

---

[4] Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

[5] Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

CALL AGREEMENT BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
SBW CONSULTING, INC.

EXHIBIT B

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]

I, Bing Tso, being first duly sworn, depose and say that I am the Principal of SBW Consulting, Inc. and I hereby state that I have read and understand the language, entitled "*ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA*" (herein "Ethical Standards") set forth in Exhibit A. I have authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records and I have made inquiry of those individuals potentially included within the definition of "Contractor" contained in the Ethical Standards.

Based on my review of the appropriate documents and the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to a category identified in footnote #1 of Exhibit A [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in Exhibit A within the past five (5) years. The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

SBW CONSULTING, INC..

By: _____
BING TSO
Principal

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

STATE OF WASHINGTON)
) ss.
County of King)

On this 30th day of April, 2014, before me personally appeared
BING TSO, to me, known to be a Principal of,
SBW CONSULTING, INC, a Washington corporation (Contractor) and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

PAMELA E NELSON
COMMISSION EXPIRES
NOTARY PUBLIC
9-11-2016
STATE OF WASHINGTON

Pamela E Nelson

Print Name: PAMELA NELSON
Notary Public in and for the State of Washington
Residing at Bellevue WA
My commission expires: 9-11-2016

CALL AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND SBW CONSULTING, INC.

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

$1,000,000 Each Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

   a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least

ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.

b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara Electric Department
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

Ebix Insurance No. S200001595

CALL NO. 14-1
FOR PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY SBW CONSULTING, INC.

The Parties to this Call No. 14-1 ("Call") agree that on this _____ day of _____, 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and SBW Consulting, Inc.," of the same date, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by SBW Consulting, Inc. ("Contractor"), which are more fully described in Contractor's proposal to City entitled "CoolerMiser Installation Program: Budget Payment Schedule and Scope of Work" dated April 3, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on June 11, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed one hundred one thousand two hundred fifty dollars ($101,250.00), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Call as evidenced by the following signatures of their duly authorized representatives.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SBW CONSULTING, INC.
a Washington corporation

By: _____
BING TSO
Title: Principal
Address: 2820 Northup Way, Suite 230
Bellevue, WA 98004
Telephone: (425) 827-0330
Fax: (425) 822-8119

"CONTRACTOR"

COOLERMISER INSTALLATION PROGRAM
BUDGET PAYMENT SCHEDULE AND SCOPE OF WORK

Submitted to

SILICON VALLEY POWER, CITY OF SANTA CLARA
1601 Civic Center Drive, Suite 200
Santa Clara, CA 95050

Submitted by

SBW CONSULTING, INC.
2820 Northup Way, Suite 230
Bellevue, WA 98004

April 3, 2014

sbw

ENERGY · WATER · EFFICIENCY

TABLE OF CONTENTS

1. BUDGET 1
2. SAVINGS GOAL 1
3. PAYMENT SCHEDULE 1
4. SCOPE OF WORK 1

1. Budget

The table below shows projected costs for the CoolerMiser Installation Program.

Table 1: Budget Summary by Category

Category	Budget Amount ($)
Project Development	$10,800
Marketing/Outreach	$31,050
Direct Implementation – Incentives and Rebates*	N/A
Direct Implementation – Direct Install Labor	$14,400
Direct Implementation – Direct Install Materials	$45,000
Total	**$101,250**

2. Savings Goal

The table below shows the savings goals for the CoolerMiser Installation Program, based on 450 installations.

Table 2: Summary of Unit Energy and Demand Savings

Measure	UES kWh	UES peak kW	UES Non-coincident kW
CoolerMisers	231,750	8.10	9.45

3. Payment Schedule

Payment for this program will be made based on invoices showing the number of CoolerMisers installed. SBW will receive compensation of $225 for each installed CoolerMiser, as verified by SVP. The full contract amount will be spent only if 450 CoolerMisers are installed.

4. Scope of Work

Task 1: Program Development

As soon as the contract is awarded, the work will begin with discussions between the SBW team and SVP regarding important program design issues. Representatives from SBW will meet with SVP program staff to discuss items such as:

- The targeted commercial customer types
- Marketing procedures and marketing material concepts
- Measure installation procedures

- Additional SVP promotional materials that will be left with the customers
- Program database
- SVP QC standards and quality control procedures applicable to this project
- Implementation schedule
- Tracking and reporting requirements

Materials developed jointly with SVP will be left with the customer for future reference.

This task will also include the development of a mutually agreed upon marketing procedures for the direct installation approach that will be used to market and implement the program and includes the marketing materials that will be distributed to customers to describe the program, the benefits of participation and warranty information. The marketing plan will address all marketing related items, such as:

- Procedures for identifying the targeted customer marketing materials that will be distributed to customers before and/or during program implementation
- Specific methods for direct customer contact

SBW will develop quality assurance procedures that will include procedures for performing a customer satisfaction survey thirty days after completing the installations at each site. The procedures will also address complaint tracking and verification.

SBW will develop a project tracking form on which SBW will document important information concerning recruitment measure installation and customer satisfaction. SVP will review and approve the tracking form before it is used. Data from the tracking form will be entered into the program tracking database as the locations are treated.

SBW will create a database to store the data collected by the field installers. The database will document all installations. SBW has extensive experience designing and managing such databases, having done so for all of its previous direct install programs. An updated version of the database will be a monthly deliverable from the program. The deliverable will enumerate progress made and will provide documentation that serves as the basis for the monthly invoice.

Deliverable 1.1: Program Development
Due Date for Deliverable 1.1: June 11, 2014 - June 15, 2014

Task 2: Program Implementation

Subtask 2.1: Marketing

This subtask includes the implementation of the marketing plan, which was agreed upon in Task 1 above.

The results from all recruitment efforts, whether successful or not, will be documented in the tracking database developed under Task 1.

Deliverable 2.1: Marketing
Due Date for Deliverable 2.1: June 11, 2014 – June 1, 2015

Subtask 2.2: Install CoolerMisers

SBW will install the CoolerMisers for eligible commercial customer at no cost to the customer. Customers will be provided with information on the installed equipment, including relevant operating instructions and warranty information. Information regarding each installed measure will be recorded on the tracking form and entered into the program database.

Any missed, cancelled or incomplete installation or any challenge/complaint from a customer will be handled immediately by the Program Manager. The customer will be contacted as soon as the issue is brought to the Program Manager's attention with a timeframe and commitment that is made for a follow-up visit (if necessary) to rectify the problem. SBW strives to make corrections on the same day, but uses its best efforts to ensure the issue is resolved by the next business day, or as soon as it is reasonably possible.

A follow-up phone call will be placed by SBW to each participating customer one month after the completed installation. During the call, SBW will inquire about customer satisfaction with the installation, and any issues or concerns regarding the operation of the measure. This information will be recorded in the database. SBW will remove the existing equipment for customers that are not satisfied with the performance of the measure.

It is anticipated that all installations will be completed before mid-May of 2015. This schedule provides enough time for SBW to place the follow-up calls before the program is completed on June 30, 2015.

Deliverable 2.2: Install CoolerMisers
Due Date for Deliverable 2.2: July 1st, 2014 – June 15th, 2015

Subtask 2.3: Quality Control and Verification

Four quality control strategies will be used during implementation. The first strategy is field installer training. SBW field installers will be thoroughly trained on all program procedures. The second strategy is documentation. SBW field installers must document all work performed. Field installers will not be compensated for units installed unless adequate documentation of work performed is provided to the SBW project manager. The third strategy is random field inspections, to confirm that installations conform to SBW best practices and to prevent internal or external fraud. The final strategy is intensive review of the tracking data. One hundred percent of the data on every completed installation form will be checked prior data entry, and 100% of the data entry will be double checked. All of the QC protocols will be documented in the work plan.

SVP inspection staff will be provided with database extracts and/or paperwork as needed to support their own QC efforts.

Deliverable 2.3: Quality Control and Verification
Due Date for Deliverable 2.3: July 1st, 2014 – June 30, 2015

Subtask 2.4: Reporting and Data Management

On a regular basis, SBW will provide a report that includes:

- An overview of marketing and recruitment activities
- An activity report indicating the customer name, site addresses (including contact information), serial numbers, and installed units per location
- Verification of energy savings
- Progress towards goals (annual kWh savings, number measures installed)
- Budget status

This regular report will be accompanied by a database extract that includes all activities performed in the previous month. This extract will also serve as the basis for the regular invoice.

At the end of the project, SBW will prepare and submit a final report. The report will describe the methodology used to implement the program and the results obtained from the program. Results include net savings achieved, direct and indirect implementation costs, customer satisfaction with the program, lessons learned from the program, and other items agreed upon during the development with SVP.

Deliverable 2.4: Reporting and Data Management
Due Date for Deliverable 2.4: August 10, 2014 – July 10, 2015

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-2

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval of Call No. 14-1 for Professional Services with Energy & Resource Solutions, Inc. for Management and Administration of Business Energy Efficiency Public Benefit Programs For Fiscal Year 2014-2015

EXECUTIVE SUMMARY:

In accordance with Public Utilities Code (PUC) Section 385 covering Public Benefits Charge (PBC), with the City's Public Benefits Program Policy Statement adopted by Council on May 12, 1998, staff has developed energy efficiency programs to benefit our commercial and industrial customers. There has been a significant increase in pressure in the past several years from the legislature, California Energy Commission, and environmental agencies to boost the level of energy efficiency programs in the municipal utilities. The City is required by state law to expend all PBC funds collected on appropriate energy efficiency, renewable energy, low-income, or new electric technology. For these reasons, we will continue to enhance the business efficiency programs.

In 2014, staff issued an RFP to renew these services and after review of the proposals received, has selected Energy & Resource Solutions (ERS) to continue as the administrator of the business energy efficiency programs, as well as assist in the development of new programs and increase customer outreach under Call No. 14-1. A copy of Call No. 14-1 is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Energy efficiency and conservation programs provide commercial and industrial customers of Silicon Valley Power with incentives and assistance in purchasing and installing energy efficient equipment. These programs help the City implement energy efficiency measures and assist business customers in reducing electric bills and peak energy requirements, providing benefits for the utility and the community.

ECONOMIC/FISCAL IMPACT:

The cost of Call No. 14-1 is not to exceed $1,090,333.00 during FY 2014/15. Sufficient funds have been budgeted in Electric Department Contractual Services/Not Classified account 191-1312-87870-[F]94100.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, Call No. 14-1 for Professional Services with Energy & Resource Solutions, Inc., in an amount not to exceed $1,090,333.00, for management and administration of business energy efficiency public benefit programs for FY 2014/15.

for John C. Roukema, Director of Electric Utility

Certified as to Budget Form:
191-1312-87870 $1,090,033.00

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

for Julio J. Fuentes, City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report: Call No 14-1 for Professional Services with Energy & Resource Solutions, Inc.

Ebix Insurance No. _____ S200002172_____

CALL NO. 14-1
FOR PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY ENERGY & RESOURCE SOLUTIONS, INC.

The Parties to this Call No. 14-1 ("Call") agree that on this _____ day of _____ 2014, this Call is made pursuant to the terms of a Call Agreement between the Parties entitled, "Call Agreement by and between the City of Santa Clara, California and Energy & Resource Solutions, Inc.," dated June 12, 2012, the terms of which are incorporated by this reference. This Call describes the Services to be provided to the City of Santa Clara, California ("City") by Energy & Resource Solutions, Inc. ("Contractor"), which are more fully described in Contractor's proposal to City entitled "Statement of Work: Business Energy Efficiency Program Administration Services" dated April 15, 2014 ("Proposal"), attached to this Call as Exhibit A and incorporated by this reference. The Services to be performed under this Call shall be completed within the time period beginning on July 1, 2014 and ending on June 30, 2015. The attached Proposal contains a complete description of the Services, and performance dates for the completion of such Services, to be performed by the Contractor under this Call. In no event shall the amount paid to the Contractor for the Services provided to City by the Contractor under this Call, including all fees or pre-approved costs and/or expenses, exceed one million ninety thousand three hundred thirty three dollars ($1,090,333.00), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Call as evidenced by the following signatures of their duly authorized representatives.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

_____
RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

_____
JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

ENERGY & RESOURCE SOLUTIONS, INC.
a Massachusetts S-corporation

By: _____
GARY EPSTEIN
Title: President
Address: 120 Water Street, Suite 350
North Andover, MA 01845
Telephone: (978) 521-2550 x225
Fax: (978) 521-4588

"CONTRACTOR"

Statement of Work

Business Energy Efficiency Program Administration Services

Prepared for

City of Santa Clara's Electric Department

Silicon Valley Power

energy & resource solutions

California Regional Office:
152 North Third Street, Suite 520
San Jose, CA 95112

Corporate Headquarters:
120 Water St., Suite 350
North Andover, Massachusetts 01845
(978) 521-2550
Fax: (978) 521-4588

April 15, 2014

Contents

1 OVERVIEW 1

2 STATEMENT OF WORK 1

2.1 PROGRAM ADMINISTRATION 1

2.2 FIELD SERVICES 2

2.3 CUSTOMER SERVICES 4

2.4 AD HOC SERVICES 4

3 COMPENSATION 5

3.1 FIXED FEE SERVICES 5

3.2 AD HOC SERVICES 5

3.3 PERFORMANCE INCENTIVE 6

Statement of Work for Business Energy Efficiency Program Management Services

1 Overview

ERS currently provides energy audit and rebate management services for the business energy efficiency programs provided by the City of Santa Clara's electric utility, Silicon Valley Power (SVP). The following sections provide the statement of work for continued management of SVP's business energy efficiency programs. The statement of work includes new, revised, and expanded services per discussions with SVP staff.

This statement of work details the ERS proposed scope of services for the 2014–2015 fiscal year, starting July 1, 2014, and ending June 30, 2015.

2 Statement of Work

ERS will provide the following services:

- **Program administration** of SVP's standard and custom rebate programs, including general customer service
- **Field services** for customer outreach, standard energy audits, project site inspections, and project verification
- **Customer services** to assist customers with identifying and implementing energy efficiency measures, understanding program offerings, and proactively developing relationships that result in increased customer satisfaction and program participation
- **Ad hoc services** for providing technical assistance not covered under the above services. Services include, but are not limited to, custom energy audits for SVP's large customers.

2.1 Program Administration

ERS will administer the program using a proactive approach that maximizes energy savings and customer satisfaction. We will process and track program rebate applications and provide monthly reports on program status.

ERS will process program rebate applications by:

- Reviewing application documentation for completeness and adherence to eligibility rules.
- Assisting applicants with completing forms and understanding program requirements.

- Processing approved applications and forwarding them to SVP for rebate payment.
- Populating and maintaining a program database that tracks project status and other key information.

Expanded tracking: Starting with the new program year, ERS will make several improvements to the tracking database. For outreach initiatives, ERS will track additional information to inform and improve future outreach activities. Additional data to be tracked includes: lead source, market segment, decision-maker contact, observed efficiency opportunities on site, follow up activities, contractor referrals, and implemented savings.

For program participants and active rebate applications, ERS will track customers by end use market segment (to be determined in consultation with SVP). In addition, ERS will revise the monthly tracking of application deadlines to more easily identify projects close to expiration and to allow early customer notification of pending deadlines.

- Reviewing project reports for third-party programs to verify that the technical assumptions and estimated energy savings are reasonable and appropriately documented. ERS will also assist program providers with completing applicable rebate forms.
- Maintaining and regularly updating a program procedures manual that includes detailed steps for the application processing and rebate tracking. An updated procedures manual will be provided by July 15 for SVP's review.

2.2 Field Services

ERS will provide the following program services to ensure customer participation in SVP's energy efficiency programs and to verify that customers have implemented cost-effective and sustainable energy saving measures:

- **Program promotion and customer outreach** – ERS will maximize program participation by:
  - Working with the SVP's Electric Program Manager–Public Benefits and SVP Key Customer Representatives to promote program services directly to customers. This may include site visits, meetings, telephone customer assistance, technical assistance and advice, and energy audits.
  - **Trade association outreach campaign**. ERS will develop and submit a trade association outreach plan by July 31 for engaging and informing vendors and customers regarding SVP program offerings. ERS will conduct research and develop a list of potential trade associations and industry conferences for engagement. The list will include customer-focused associations (such as the Silicon Valley Leadership Group and its Data Center Efficiency Summit) and vendor-focused associations (such as ASHRAE, AEE, and IFMA). Based on the assessment of each association, ERS will establish a

calendar of events and assign staff for attendance. Within the targeted associations, ERS will identify which provide the best opportunity for engaging customers and vendors through program presentations. ERS will approach selected association organizers to arrange a spot on the appropriate agendas for presenting SVP business energy efficiency program rebates and services.

- Conducting targeted outreach initiatives to promote customer-specific measures opportunities, disseminate program information, and gather customer information to help inform future outreach campaigns.

Initiative plan outline: In addition to the trade association campaign, ERS will conduct up to two additional outreach campaigns, each targeting a group (up to 150 businesses per group) of similar customer types. The first campaign will likely focus on a subset of medium-sized customers. ERS will develop and submit a plan for each campaign and work with SVP to establish the campaign goals and objectives. The campaigns will generally consist of door to door, telephone, or email customer contact. ERS will provide program rebate forms and letters which provide a tailored message and set of measures most applicable to the targeted group. A campaign may also consist of providing assistance for SVP Key Customer Representative-driven initiatives, such as a cohort or other similar group settings designed to engage customers. Initiative activities will be tracked as described in Section 2.1 under expanded tracking.

- Maintaining relationships with trade allies such as contractors, equipment suppliers, and energy service providers to leverage their customer marketing and outreach into increased program participation. This effort includes ad hoc training sessions for contractor trade allies, such as training lighting contractors on the use of the SVP lighting rebate calculator and understanding the upcoming building energy code changes.

- Providing comprehensive services and assistance to small businesses through the Small Business Efficiency Services Program. In addition, ERS will work with trade allies to target potential program participants as well as seek other opportunities to increase customer enrollment.

- **Energy audits** – ERS will provide standard and benchmark energy audits for SVP customers. Energy audits are defined as energy efficiency surveys or energy efficiency assessment studies that are designed to maximize customer implementation rates of energy-efficient measures.

  Revisions to energy audit reports: ERS will expand the non-energy benefits information provided in the energy audit reports. The resources and approach used to identify and present customer non-energy benefits will be added to the procedures manual, which provides the standard procedures for scheduling, performing, and delivering energy audits.

- **Site inspections** – ERS will conduct pre- and post-project inspections to ensure that projects have been installed and commissioned in a manner that will produce sustainable energy savings. As part of our inspection activities, ERS will assess project installations, ensure that projects comply with program requirements, and verify the project's energy savings performance.

For third-party programs, ERS will inspect a sample of projects post-installation to verify that projects were implemented as reported by the program providers.

Pre- and post-inspection procedures are outlined in the program procedures manual.

2.3 Customer Services

To help ensure customer satisfaction, ERS will provide proactive and timely support to customers interested in participating in SVP's energy efficiency programs. We will deliver unbiased information and develop thoughtful and appropriate solutions to assist customers with overcoming barriers to the implementation of energy cost-saving measures at their facilities. To that end, ERS will provide the following support services:

- **Program inquiries** – ERS will respond to inquiries from customers and their energy service providers regarding program rules and procedures. We will explain program details, eligibility rules, and the application process and provide technical advice and links to technical resources. When applicable, we will direct customer inquiries not related to energy efficiency programs to the appropriate SVP personnel.
- **Application assistance** – ERS will assist customers and their energy service providers with completing program application forms. We will help ensure that the customer has correctly completed the form and provided all necessary supporting documentation and information.
- **Technical assistance** – ERS will provide support and technical assistance to help customers during their decision-making process and to help move customer projects toward implementation. We will provide telephone and on-site support to discuss project details and help assess project energy savings potential, and we will also provide customers with design assistance to help ensure that energy efficiency is incorporated into the project's planning and development stages.
- **Project measurement and verification** – For the custom measure programs, ERS will assist customers in developing a project measurement and verification plan that substantiates the project's estimated energy savings.

2.4 Ad Hoc Services

ERS will provide supplemental technical and customer assistance services to support SVP programs. As part of ad hoc services, ERS will conduct custom energy audits for large businesses. Large businesses are generally defined as customers with a peak demand greater than 1 MW or energy

consumption greater than 30 kWh per square foot of building area. All custom energy audits must be pre-approved by SVP.

Ad hoc services may also include, but are not limited to program outreach activities beyond those included under fixed fee services or customer technical assistance studies.

3 COMPENSATION

Fees for services will be a combination of fixed and variable fees, with a not-to-exceed contract price of $1,090,333. Table 3-1 shows the summary of these fees.

Table 3-1
Price Summary: FY2014-2015

Description	Price
Fixed Fee Services	$870,000
Ad Hoc Services	$120,000
Performance Incentive	$100,333
Total NTE Price	**$1,090,333**

3.1 Fixed Fee Services

Program administration, field services and customer services will be billed on a fixed-fee-per-month basis. Table 3-2 lists the monthly unit prices for the contract period of July 1, 2014, through June 30, 2015.

Table 3-2
Monthly Fixed Fees

Task	Service Category	Price
1	Program administration	$7,076
2	Field services	$37,671
3	Customer services	$27,753
Total		**$72,500**

The price for 12 months of fixed-fee services is $870,000.

3.2 Ad Hoc Services

Ad hoc services will be priced using either time and material or fixed fee pricing with a total not-to-exceed amount. The proposed services and costs will be submitted to SVP for approval before any work is performed. The pricing will be based on the ERS labor rates provided in Table 3-3.

For custom energy audits, a proposed scope of work and price will be submitted to SVP for approval. Should SVP opt to require a customer co-payment, customer approval will also be obtained before any work commences.

Table 3-3
ERS Hourly Labor Rates

Staffing Direct Labor	Hourly Rate FY2014
Officer/Principal Consultant	$235
Director	$200
Senior Engineer/Consultant	$160
Project Engineer II, Project Consultant II	$145
Project Engineer I, Project Consultant I	$130
Energy Analyst	$115
Administrative Staff	$85

3.3 Performance Incentive

ERS will be paid a performance incentive for energy savings from completed projects. Energy savings goals will be established for each customer size category. Table 3-4 provides the performance incentive rate, energy savings goals, and corresponding total incentive by customer size category. In order to promote achieving goals within each category, incentive payments will be capped at 120% of each category's savings goal. Total incentive payments are capped at $100,333. Energy savings goals are gross savings before any net savings impacts are applied. Energy savings counted towards achieving goals include all business energy efficiency program projects completed in the program year, including third party program completed projects.

Table 3-4
Performance Incentives

Customer Category	Gross Savings Goal (MWh)	Incentive Rate ($/MWh)	Performance Incentive
Small customers (less than 200 kW)	4,500	$3.35	$15,075
Medium customers (201- 999 kW)	6,000	$3.35	$20,100
Large customers (1 MW and greater)	19,450	$3.35	$65,158
Totals	**29,950**		**$100,333**

3.5 Renewal Option

For the contract period of July 1, 2015 through June 30, 2016, ERS will provide the same services at the price shown in Table 3-5. Additional or revised services will be priced as needed.

Table 3-5
Price Summary: FY2015-2016

Description	Price
Fixed Fee Services	$890,000
Ad Hoc Services	$120,000
Performance Incentive	$100,333
Total NTE Price	**$1,110,333**

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MB-3

Date: May 6, 2014

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval of Amendment No. 1 to Work for Others Agreement No. 64556 with Battelle Memorial Institute, Pacific Northwest Division to Extend the Term of a Study on the Potential Impacts of Increasing the Use of Solid State Lighting with Lighting Controls

EXECUTIVE SUMMARY:

On May 14, 2013, Council approved a Work for Others Agreement No. 64556 with Battelle Memorial Institute, Pacific Northwest Division to provide a study for potential impacts of increasing the use of solid state lighting with lighting controls. Recent observations within the industry indicated that the growth predicted for solid-state lighting and the increase in dimming controls could have unexpected power quality/harmonics impacts on utility systems, as well as an impact on utility billing due to the lighting systems appearing to be consuming reactive power and generating harmonics. Three particular aspects being examined in this study are: metering and billing; harmonic effects on power quality; and possible impacts on power system stability. As we continue to see the adoption of solid state lighting and lighting controls, and support these emerging technologies through our energy efficiency rebates, it is important to understand the potential impacts to our utility system and customers' utility bills. Due to the complexity of this study and preparation of the report, Battelle has requested an extension of the termination date of three (3) weeks. Staff proposes to enter into Amendment No. 1 to extend the termination date until June 30, 2014, at no additional cost to the City, in order to complete the study and receive the report, which is required in order to fulfill the APPA DEED grant. A copy of Amendment No. 1 with Battelle Memorial Institute is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Silicon Valley Power will gain a better understanding of the potential impacts that widespread adoption of solid state lighting with lighting controls may have on the utility system and customers' utility bills. Without this extension work will cease. The study will not be completed and the City will not be reimbursed 50% by the APPA DEED grant.

ECONOMIC/FISCAL IMPACT:

Extension of this Amendment will require no additional funds.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, Amendment No. 1 to Work for Others Agreement No. 64556 with Battelle Memorial Institute, Pacific Northwest Division, to extend the termination an additional three (3) weeks or until June 30, 2014, at no additional cost to the City, to complete a study on the potential impacts of increasing the use of solid state lighting with lighting controls.

John C. Roukema
Director of Electric Utility

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report:

1) ***Amendment No. 1 to the Work for Others Agreement No. 64556 with Battelle Memorial Institute***

Amendment No. 1
to
Work for Others Agreement No. 64556

between

BATTELLE MEMORIAL INSTITUTE, PACIFIC NORTHWEST DIVISION
(hereinafter referred to as "Contractor")

Operating under Prime Contract No. DE-AC05-76RL01830
for the U.S. Department of Energy

and

CITY OF SANTA CLARA

(hereinafter referred to as "Sponsor")

WHEREAS both Parties have entered into the above-identified Work for Others Agreement and desire to amend said Agreement.

NOW THEREFORE, the Parties hereby agree to delete the below mentioned Articles in their entirety and replace with the following modifications:

ARTICLE II. TERM OF THE AGREEMENT

The Contractor estimated period of performance for completion of the Statement of Work is Twelve (12) months. The start date of this Agreement shall be June 3, 2013 and remain in effect through June 27, 2014.

All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

BATTELLE MEMORIAL INSTITUTE
PACIFIC NORTHWEST DIVISION

Name _____

Title CONTRACTING OFFICER

Date 4/1/14

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B.4

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: John C. Roukema, Director of Electric Utility

Subject: Approval of Fiber Lease Agreement with BarnesandNoble.com, LLC for Long Term Use of Dark Fiber Routes

EXECUTIVE SUMMARY:

In 1995, Council approved the construction of a backbone fiber optics network for the Electric Department and for General Government communication needs that included added capacity for the leasing of fiber and the provision of other services to third parties. As of July 1, 2000, the backbone fiber optics network was substantially completed and notice of completion was delivered to the first dark fiber lessee.

Staff has negotiated a long-term fiber optic lease with BarnesandNoble.com, LLC. The lease is for an irrevocable right to use for five years with expected revenues in excess of $34,214.40 annually, or $171,072.00 over its 5-year term. The fiber installation also allows for the provision of additional services in the future. While the majority of the Agreement will be maintained as public record, specific term and pricing provisions are confidential and are available for Council review in the Office of the City Clerk. A copy of the BarnesandNoble.com, LLC Fiber Lease Agreement is available for review in the Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

This fiber lease agreement allows Silicon Valley Power (SVP) to continue to maintain fiber for communication requirements necessary for reliable system operation while producing revenue. The lease will not require additional investment in the fiber optic backbone network, but will require operational and administrative attention. These requirements will be met by existing personnel and contracted services.

ECONOMIC/FISCAL IMPACT:

As BarnesandNoble.com, LLC grows its business in Santa Clara, it is expected to contribute $171,072.00 over its term to help offset Electric Utility expenses. No additional allocation of funds is required to execute the BarnesandNoble.com, LLC fiber lease agreement.

RECOMMENDATION:

That Council approve, and authorize the City Manager to execute, the Fiber Lease Agreement with BarnesandNoble.com, LLC for long term use of dark fiber routes

APPROVED:

John C. Roukema
Director of Electric Utility

for Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Fiber Lease Agreement with BarnesandNoble.com, LLC

FIBER LEASE AGREEMENT BY AND BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA AND BARNESANDNOBLE.COM, LLC

PREAMBLE

This lease agreement, ("Agreement"), is made and entered into in the City of Santa Clara, County of Santa Clara, State of California on this ___ day of _____ 2014, ("Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power (the "City"), and BarnesandNoble.com, LLC, ("Lessee"), with an office at 122 Fifth Avenue, New York, NY 10011. The City and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

Whereas:

A. In the exercise of the powers granted under Article 11, Section 9 of the California Constitution, the Charter of the City of Santa Clara, the Santa Clara City Code and other laws, the City of Santa Clara has constructed a Fiber Optic Infrastructure within the jurisdictional boundaries of the City. The Fiber Optic Infrastructure is to facilitate the application of state-of-the-art telecommunications services to accommodate the requirements of the Electric Department and potentially other City agencies and municipal institutions. Title to the Fiber Optic Infrastructure, and every part thereof, is vested exclusively in the City.

B. The Fiber Optic Infrastructure has been designed with fiber strand capacity (dark fiber) available for leasing or licensing ("Leaseable Fiber(s)"). The City is to construct, install, operate, maintain, repair, disconnect, replace and remove facilities, cable and other equipment necessary for the Fiber Optic Infrastructure.

C. Lessee is now duly authorized, licensed or otherwise qualified to operate as required by applicable state or federal laws ("Qualified Party") and that it intends to use Leaseable Fibers from the Fiber Optic Infrastructure for lawful purposes.

AGREEMENT PROVISIONS

In consideration of the Recitals above and the mutual promises contained in this Agreement, the Parties agree as follows:

ARTICLE 1. GRANT AND SCOPE OF LEASE

1.1 The Parties to this Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Agreement by this reference. The Parties agree that this Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Agreement.

1.2 **Authority.** The City of Santa Clara is a charter city and a municipal corporation, drawing its authority from Article 11 of the California State Constitution. Article 11 and the charter adopted by the City in 1951, allow the City to, *inter alia*, establish, purchase, and operate public works to furnish inhabitants with light, water, power, heat, transportation, or means of communication. The City owns the Fiber Optic Infrastructure as a public works operated by its electric utility, Silicon Valley Power.

1.3 **Fiber Optic Infrastructure.** The City has constructed a Fiber Optic Infrastructure located either underground in the City conduits or overhead on electric utility poles in the general route set forth in Exhibit 2. Any future expansions to the Fiber Optic Infrastructure owned by the City may be included in the definition of "Leasable Fibers".

1.4 **Non-Discrimination.** The City, as a public entity, may not unduly discriminate against any Lessee or potential Lessee in leasing Leasable Fiber or additional Leaseable Fiber. The City shall, in good faith, make all commercially reasonable efforts to ensure that each Lessee pays a price per fiber mile equivalent to other Lessees, based upon the number of Leased Fibers, total fiber miles and length of Term. The City shall, in good faith, make all commercially reasonable efforts to require equivalent Adequate Assurance (Article 10) from each Lessee based upon the total Lease Payment due by that Lessee.

1.5 **Grant.** Subject to the provisions of this Agreement and Exhibits 1 through 11, inclusive which are incorporated by this reference as though set forth in full, the City grants to Lessee, and Lessee accepts from the City, the right and privilege ("Lease") to use certain of the Leaseable Fibers ("Leased Fiber(s)"), Attachment Points, Backbone Extensions, Service Drops, Private Property Access, Lateral Extensions, Building Entrances (as set forth in Exhibits 3 and 4 and referred to herein collectively as "Leased Infrastructure") and any additional Leased Infrastructure later specifically leased to Lessee by an executed Exhibit 10. ("Additional Leased Infrastructure").

1.6 **Leased Fibers.** This Lease establishes the right of Lessee to use the Leased Infrastructure described in Exhibits 3, 4 and executed versions of Exhibit 10.

1.6.1 The Leased Fibers under this Agreement are set forth in Exhibits 3, 4 and executed versions of Exhibit 10.

1.6.2 **Additional Leased Fibers.** In the future, the City may lease to Lessee additional Leaseable Fibers requested by Lessee during the remainder of the Term of this Agreement, if capacity is available and the following conditions are met:

1.6.3 Lessee shall be granted a Lease of additional Leaseable Fibers so long as the capacity remains available and Lessee is not in material breach of this Agreement. If Lessee is currently, or in the past has been, in material breach of this Agreement, then it is within the discretion of the Director of the Electric Utility to allow or deny the lease of additional Leasable Fiber to Lessee: provided, however, that the Director of the Electric Utility shall not unreasonably deny the lease of additional Leasable Fiber to Lessee.

1.6.3.1 The Director of the Electric Utility ("Director") has authority delegated by the City Council to agree to the lease of additional Leasable Fibers to Lessee. Lessee shall make a request for additional Leasable Fibers by submitting the Request Form attached as Exhibit 10, executed by a person authorized to bind Lessee. The price, terms and conditions of leasing additional Leasable Fiber shall be negotiated in good faith and agreed upon by the Parties. Upon mutual agreement of the Parties as to the price, terms and conditions, Exhibit 10 shall be revised and executed by an Authorized Representative of Lessee and the Director, and an amendment to this Agreement shall have occurred without the necessity of further action by either Party. All other terms and conditions set forth in this Agreement will apply to the Additional Leased Fibers. The Lease as to the Additional Leased Fibers shall commence on the Date of Delivery thereof and shall terminate at the end of the specified Term.

1.7 **Attachment Points.** Lessee shall have use of, and access to, the Leased Fibers through Attachment Points listed on Exhibit 4 or subsequently added by an executed Exhibit 10. All Attachment Points are an integral part of the Fiber Optic Infrastructure and are the property of the City.

1.7.1 **Cost of Attachment Points.** The City will provide Lessee with the Attachment Points listed on Exhibit 4 and with the Attachment Points listed on any executed versions of Exhibit 10 at the cost set forth in Article 3 "Lease Payment and Other Fees—Attachment Points".

1.7.2 **Lessee's Infrastructure Unavailable.** If the City has been requested to perform construction of Leased Infrastructure, and if at the time the City completes that construction Lessee is not prepared to complete the connection, then Lessee shall be responsible for splicing its fiber to the thirty (30) foot fiber drop provided by the City as agreed in paragraph 5.2.2. If Lessee desires City to provide fiber drop cable in excess of the thirty foot drop, or if Lessee desires City to splice the drop to Lessee's Infrastructure, then when applicable

Lessee will pay the fees specified in Article 3 "Lease Payment and Other Fees—Attachment Points".

1.7.3 **Splicing.** If Lessee provides cable from Lessee's Infrastructure to the City in a timely manner (i.e. other than as stated in paragraph 1.6.2), then upon Lessee's request, the City shall splice Lessee-provided fiber cable at designated City-owned Attachment Points. The City shall be responsible for pulling Lessee's fiber cable, and splicing Lessee's fiber strand within the City-owned Fiber Optic Infrastructure. Ownership of fiber on the City's side of the Demarcation Points shall be vested with the City. When applicable, Lessee shall pay the City the fees specified in Article 3 "Lease Payment and Other Fees—Attachment Points"

1.7.4 **Splicing on City's Side of Demarcation.** Splicing of fibers located within the Fiber Optic Infrastructure, if required to accommodate Lessee, shall be performed only by the City's personnel or designated independent contractors, or both. The City shall assume responsibility for the construction taken on behalf of Lessee in accordance with Exhibit 7. When applicable, Lessee shall pay to the City the fees specified in Article 3 "Lease Payment and Other Fees—Attachment Points".

1.7.5 **Additional Attachment Points.** If, after execution of this Agreement by the Parties, Lessee desires to attach to other Attachment Points not listed in Exhibit 4 ("Additional Attachment Points"), then Lessee shall submit a request through a Request Form (attached hereto as Exhibit 10) executed by a person authorized to bind Lessee ("Authorized Representative"). The City shall cooperate in accommodating Lessee's requests for Additional Attachment Points so long as adequate space exists to attach Lessee to that Attachment Point, the request to be attached to Additional Attachment Points is not unreasonable, and the Additional Attachment Points do not materially and adversely affect the Fiber Optic Infrastructure. Authority to agree to Additional Attachment Points for Lessee is delegated to the Director by the City Council. The terms and conditions of leasing Additional Attachment Points shall be negotiated and agreed upon by the Parties; the price for Additional Attachment Points is set forth in Article 3. If the Director and the Authorized Representative execute Exhibit 10, then an amendment to this Agreement has occurred; Exhibit 4 may be modified to reflect the Additional Attachment Points All other terms and conditions set forth in this Agreement will apply to the Additional Attachment Points.

1.8 **Backbone Extensions.** The City will install the Backbone Extensions at the locations shown in Exhibit 4 or any executed Exhibit 10, and shall make its commercially reasonable efforts to complete construction by the estimated completion dates set forth in that Exhibit.

1.8.1 If the City has the monetary resources and manpower to construct the requested Backbone Extension at the time it is requested by Lessee, then there shall be no charge to Lessee for engineering or construction services. Lessee shall be billed for added fiber miles at the rate set forth in Exhibit 5.

1.8.2 If the Backbone Extension is one that the City had not anticipated building at the time Lessee requests it, or if the City does not have the monetary resources or manpower to construct the Backbone Extension at the time it is requested by Lessee, then Lessee shall pay the amount set forth in Article 3 "Lease Payment and Other Fees—Backbone Extensions".

1.8.3 If Lessee desires Additional Backbone Extensions, then Lessee shall submit a request through a Request Form (attached hereto as Exhibit 10) executed by an Authorized Representative. The terms, conditions and estimated delivery dates for the construction and leasing of Additional Backbone Extensions shall be negotiated and mutually agreed upon by the Parties. The Director may have authority delegated by the City Council to agree to Additional Backbone Extensions, but on occasion, approval of the City Council may be required for expenditure of funds. If the Director and the Authorized Representative execute Exhibit 10, then City agrees to build the Additional Backbone Extensions, and an amendment to this Agreement has occurred.

1.9 **Service Drops.** The City will install the Service Drops at the locations shown in Exhibit 4 or any executed Exhibit 10, and shall make its commercially reasonable efforts to complete construction by the estimated completion dates set forth in that Exhibit. Upon installation of such Service Drops by City and acceptance of such Service Drops by lessee in accordance with Article 4, Lessee shall be billed for additional fiber miles at the rate per fiber mile set forth in Exhibit 5 and shall be charged for construction and engineering costs based on the terms set forth in Exhibit 4 or an executed Exhibit 10.

1.9.1 The City charges Lessee for construction of Service Drops, which amount is set forth in Article 3 "Lease Payment and Other Fees—Service Drops" based on terms set forth in Exhibit 4 or an executed Exhibit 10.

1.9.2 If Lessee desires Additional Service Drops, Lessee shall submit a request through a Request Form (attached hereto as Exhibit 10) executed by an Authorized Representative. The terms, conditions and estimated delivery dates of building or leasing Additional Service Drops shall be negotiated and agreed upon by the Parties and set forth in Exhibit 10. If the Director and the Authorized Representative execute Exhibit 10, then an amendment to this Agreement has occurred. All other terms and conditions set forth in this Agreement will apply to the Additional Service Drops.

1.10 **Private Property Access and/or Lateral Extensions.** The City will install the Private Property Access or Lateral Extension at the locations shown in Exhibit 4 or any executed Exhibit 10, and shall make its commercially reasonable efforts to

complete construction by the estimated completion dates set forth in that Exhibit. Lessee is billed for added fiber miles at the rate per fiber mile set forth in Exhibit 5 and shall be charged for construction and engineering costs based on the terms set forth in Exhibit 4 or an executed Exhibit 10.

1.10.1 If the Private Property Access or Lateral Extension is to a location where other potential Lessees desire to run fiber, and if the City has the monetary resources, and manpower to construct the requested Private Property Access or Lateral Extension at the time it is requested by Lessee, then there shall be no charge to Lessee for engineering or construction services.

1.10.2 If the Private Property Access or Lateral Extension is one that no other Lessee desires, then it is treated as a Service Drop. If the Private Property Access or Lateral Extension is to a location where other potential Lessees desire to run fiber, but the City had not anticipated building that Private Property Access or Lateral Extension at the time Lessee requests it, or if the City does not have the monetary resources or manpower to construct the Private Property Access or Lateral Extension at the time it is requested by Lessee, then Lessee shall pay the amount set forth in Article 3 "Lease Payment and Other Fees—Private Property Access". The price per fiber mile associated with the Private Property Access or Lateral Extension is set forth in Exhibit 5 and the cost of engineering and construction of a Private Property Access or Lateral Extension is set forth in Exhibit 4 or an executed Exhibit 10.

1.10.3 If Lessee desires Additional Private Property Access (or Lateral Extension), then Lessee shall submit a request through a Request Form (attached hereto as Exhibit 10) executed an Authorized Representative. The terms, conditions and delivery dates for the construction and leasing of Additional Private Property Access or Lateral Extension shall be negotiated and mutually agreed upon by the Parties. The Director may have authority delegated by the City Council to agree to Additional Private Property Access, but on occasion, approval of the City Council may be required for expenditure of funds. If the Director and the Authorized Representative execute Exhibit 10, then City agrees to perform the Additional Private Property Access or Lateral Extension, and an amendment to this Agreement has occurred.

1.11 **Building Entrances and City Point-of Presence.** The City will deliver Lessee to the Building Entrances or City Point-of Presence at the locations so designated on Exhibit 4 or any executed Exhibit 10.

1.11.1 Some City Attachment Points are at Building Entrances and so long as the City has space available in its rack at the Building Entrance, City will agree to provide Lessee with that Building Entrance. However, the number of Lessee's fibers to be connected at the specific Building Entrance shall be set forth in Exhibit 4 or 11. Unless negotiated and agreed upon between City and Lessee, Lessee shall not be entitled to demand connection of all Leased Fibers passing by that Building Entrance to that Building Entrance. The City has a

finite number of connections allowed in each Building Entrance and numerous Lessees. The number of Lessee's fibers to be connected at a Building Entrance is a negotiated number.

1.11.2 Some City Attachment Points are not in Building Entrances but are located in meet-me-boxes located on the private property near the building. Unless the City expressly agrees in writing to negotiate a Right-of-Entry which results in a Building Entrance, the City shall only deliver Lessee to the meet-me-box at that City Attachment Points. Lessee shall be responsible for negotiating the Right-of-Entry and securing the Building Entrance on its own behalf.

1.11.3 Where no Building Entrance or Attachment Points exists at the location Lessee desires to have its fiber, then the City shall determine (i) whether sufficient other Lessees desire to locate at that Attachment Points such that engineering and construction costs should be the City's or if the build should be treated as a Service Drop and (ii) whether the Lessee or the City shall be responsible for securing the Right-of-Entry.

1.11.4 If the City agrees to deliver Lessee to a new Building Entrance and the City assumes the obligation of securing the Right-of-Entry, then all completion dates for connections to Building Entrances are estimated completion dates and shall not be guaranteed by the City.

1.11.5 Lessee is always responsible for obtaining a Service Agreement on its own behalf enabling Lessee to have Lessee's Infrastructure located within a private building.

1.12 **No Exclusivity.** Nothing in this Agreement is to limit the City's right of use of, or right to lease or license Attachment Points, Backbone Extensions, Service Drops, Private Property Access, Building Entrances, conduit or the remaining City Fiber or Leasable Fiber no leased in this Agreement to others.

1.13 **Limitations.** This is a Lease for the use of the Leased Infrastructure only, subject to the terms and conditions herein. City is not transferring or granting to Lessee any other interest or estate in the Leased Fibers, the Fiber Optic Infrastructure, Attachment Points, Backbone Extensions, Service Drops, Private Property Access, Building Entrances, conduit or any other property interest, including any fee, easement, or any franchise rights. This Agreement is not a contract for electric service. Electric service may be provided to Lessee by application to the Municipal Services Division and pursuant to the Municipal Services Rules and Regulations. This is not a franchise agreement for providing cable services. A franchise agreement may be obtained through the City Attorney's Office.

1.14 **No Agency.** Lessee is not City's agent and shall have no authority, express or implied, to act as agent of City or any of its departments for any purpose. The City is not Lessee's agent and shall have no authority, express or implied, to act as agent of Lessee for any purpose.

ARTICLE 2. TERM

2.1 **Effective Date of Agreement.** This Agreement shall be binding on the Parties beginning on the Effective Date.

2.2 **Term of Lease.** The Term of this Lease is the Initial Term plus any exercised Renewal Terms. The Initial Term is defined in Exhibit 5.

2.3 **Renewal Terms.** Provided Lessee is not in default of any of the material terms or provisions of this Lease (including but not limited to payment of all fees and charges) beyond the applicable cure period. Lessee shall have the option to renew the lease for two successive three-year terms, immediately following the initial term. The manner in which to set price for a Renewal Term is set forth in Article 3, "Lease Payment and Other Fees". To request a Renewal Term, Lessee shall:

2.3.1 Deliver to the Director, a written request to extend the Term as early as one hundred and eighty (180) calendar days, and no later than ninety (90) calendar days, prior to the expiration of the then effective term, Initial, Renewal or otherwise. (Time-is-of-the-essence may be invoked by the City with respect to this notification period.)

2.3.2 For any request to renew this Lease the Parties shall mutually agree upon a rate that is consistent with market prices at that time. For any request to renew this Lease beyond two Renewal Terms, the Parties shall also agree upon the Term length. A Renewal Term shall not be unreasonably withheld.

ARTICLE 3. LEASE PAYMENT AND OTHER FEES

3.1 Lessee shall pay to the City in United States dollars the Lease Payment as calculated in Exhibit 5 for the Lease and use of the Leased Infrastructure, as well as any other applicable fees as set forth below. Beginning on the second anniversary of the Effective Date, the price per fiber mile will be adjusted to reflect annual changes in the Consumer Price Index. This adjustment will be applied on January 1st of each year. The base for computing the Price Inflation Adjustment (PIA) shall be the most current Consumer Price Index for *all Urban Consumers* for the San Francisco Oakland San Jose CMSA, published by the United States Department of Labor, Bureau of Labor Statistics available on December 1 of each year

3.2 **General Criteria.** The Lease Payment is based on:

3.2.1 The total number of Leased Fibers leased by Lessee as shown in Exhibit 3;

3.2.2 The length of the Leased Fibers (fiber miles) to the nearest foot as shown on Exhibit 3; and

3.2.3 Availability of the Leased Fiber. Lease charges for the Leased Fiber are to accrue from the Date of Delivery in the quarter the Leased Fiber is delivered and for the number of calendar days following the Date of Delivery that the Leased Fiber is available to Lessee (see 3.2.4). In any subsequent quarter, the Leased Fiber is deemed available to Lessee for 91 calendar days. Notwithstanding the foregoing, no Lease Payment shall be due for any fibers specifically designated as not being in compliance with the Fiber Specifications set forth in Exhibit 7 hereto unless and until same shall have been found to have been in compliance in accordance with the provisions of Article 4 below. The Rate Schedule is set forth in Exhibit 5.

3.2.4 Prorated Lease Payment. If a Delivery Date occurs in the middle of a quarter, the Lease Payment is prorated. The Lease Payment for any quarter shall be based on the criteria set forth in paragraph 3.2 of the Agreement, in accordance with the following calculation:

$$\text{Lease Payment} = \sum_{\text{Segments}} [\text{Length of Segments} \times \text{No. of Fibers} \times \text{Rate} \times 3 \times [\text{Days of availability}/91]].$$

3.3 **Lease Payment.** The Lease Payment for any quarter shall be based on the criteria set forth in paragraph 3.2, in accordance with the calculation set forth in Exhibit 5. Charges for the first Lease Payment shall commence to accrue on the Date of Delivery.

3.3.1 **Due Date of Lease Payments.** Except in instances in which Lessee has elected the pre-payment option (paragraph 3.4 below) Lease Payments shall be paid on a quarterly basis. Lease Payments are due and payable on or before the commencement of a quarter, to wit: before January 1, April 1, July 1, and October 1. For the Date of Delivery for any Leased Fiber that has been delivered to Lessee, Lessee shall pre-pay for use of that Leased Fiber for the coming quarter. For any Leased Fiber delivered to Lessee for which the Date of Delivery occurs after the commencement of a quarter, Lessee shall have use of that Leased Fiber without pre-payment and shall pay the pro-rated amount at the end of the quarter in which the Leased Fiber was delivered, as well as the pre-payment amount for the next quarter.

3.3.2 The City shall send an invoice dated thirty (30) calendar days prior to the end of the quarter, to Lessee as a reminder of the total amount of the quarterly Lease Payment due thirty (30) calendar days later. If Lessee does not receive such an invoice, it is still bound to pay the quarterly Lease Payment in a timely manner, which amount is set forth in Exhibit 5. Lessee shall make each quarterly payment to the City under this Agreement in a timely manner via wire transfer to:

Bank of America
City of Santa Clara
A/C 1436-380211
ABA# 026-009-593

3.3.3 If the Lease Payment is not paid as required herein, simple interest on unpaid, undisputed amounts of the Lease Payment shall accrue, until paid, at one percent (1%) per month.

3.4 **Pre-Payment Option.** Lessee may choose to pre-pay the entire Initial Term of the Lease and receive a discounted price upon execution of the Lease. Lessee may also elect, at any time in the future, to prepay any remaining balance of the Annual Payments due under the Initial Term, or any Renewal Term, of this Agreement by sending a written notification to City. Within ten (10) business days of receipt of such notice, City shall respond by sending Lessee an invoice for the net present value of the remaining Annual Payments, which net present value shall be determined by discounting the sum of the remaining future payments due under the Initial Term or the Renewal Term, as applicable, of this Agreement by fifteen percent (15%) per year. The amount due shall reflect the annual price per fiber mile prevailing at the time of prepayment. Lessee shall pay such invoice within thirty (30) days of receipt thereof, or shall forfeit the election to prepay the remainder of the Initial Term or the applicable Renewal Term. Any Lessee electing to pre-pay the Lease shall be required to pay a Maintenance Fee as set forth in paragraph 3.5 Below.

3.5 **Maintenance Fees.** For Lessees making quarterly lease payments pursuant to paragraph 3.3 above, no Maintenance Fee is charged. For Lessees electing to pre-pay the Lease (paragraph 3.4 above), Lessee will make annual payments of ten dollars ($10) per fiber mile per month for ongoing fiber maintenance and administration. Payment will be due annually, at the beginning of each calendar year. Lessee shall make this annual payment to the City in a timely manner via wire transfer to:

Bank of America
City of Santa Clara
A/C 1436-380211
ABA# 026-009-593

The City shall send an invoice to Lessee dated thirty (30) calendar days prior to the first of the year as a reminder of the amount due. If the Lease Payment is not paid as required herein, simple interest on unpaid, undisputed amounts of the Lease Payment shall accrue, until paid, at one percent (1%) per month.

3.6 **Lease Payment for Renewal Term.** At the cessation of the Initial Term Lessee may elect to renew this Lease ("Renewal Term") as set forth in section 2.3 for that Renewal Term and at the Rate Schedule for Renewal Term as set forth in Exhibit 5.

3.6.1 **Price Inflation Adjustment.** During any Renewal Period, the Rate shall be adjusted annually for price inflation ("PIA") on January 1st, for each

successive year after the first year of the Renewal Term. The base for computing the PIA shall be the most current Consumer Price Index for *All Urban Consumers* for the San Francisco-Oakland-San Jose CMSA, published by the United States Department of Labor, Bureau of Labor Statistics available on December 1 of each year.

3.6.2 **Market Rate Adjustment.** The Rate Schedule shall be adjusted at the commencement of each Renewal Term to reflect prevailing market conditions at that time. The change in the Rate in the first year of any such rate adjustment period shall not exceed plus or minus 20 percent relative to the Rate charged in the immediately preceding 5-year period. For a rate adjustment to take effect, the parties shall mutually agree upon the terms and rates.

3.7 **Construction Costs and Engineering Fees.** The City charges for engineering services and construction of infrastructure under certain circumstances as set forth below. Unless otherwise specified below, payment for those services shall be invoiced upon completion by the City, and payment of that invoice is due thirty (30) days from the date on the invoice. If payment of the invoice is not paid on the Due Date, then simple interest on the unpaid, undisputed amounts shall accrue until paid, at one percent (1%) per month. If Lessee fails to pay any invoice, then the City may subject the applicant to the Notice & Cure Rights of the Lessee, then the provisions of Article 11.1.2 apply and the City may draw against the Adequate Assurance posted by Lessee pursuant to Article 10.

3.7.1 **Preliminary Engineering Fees.** Subsequent to execution of this Agreement and delivery of the Adequate Assurance, but prior to the Date of Delivery of the Leased Fiber and prior to the first Due Date of a Lease Payment for that fiber, it is anticipated that SVP will be required to provide to Lessee Preliminary Engineering Services. SVP will perform these Preliminary Engineering Services upon deposit of the Adequate Assurance. SVP shall render an invoice every thirty (30) days detailing the hours of Preliminary Engineering Services performed for Lessee at a City's actual costs. Lessee shall pay for the Engineering Services performed, which payment is due within thirty (30) days of date on the invoice.

3.7.2 **Construction of the Configuration.** In general, the City does not charge Lessee for the engineering services or construction costs of splicing Lessee's basic ring configuration. However, if Lessee does not make its first Lease Payment or this Agreement is otherwise terminated due to no fault of the City prior to the Due Date of the first Lease Payment, then Lessee shall pay SVP for Construction of the Configuration of Lessee's Leased Fiber (as set forth in Exhibits 3 and 4). Lessee shall be liable for any attorney fees expended by SVP in attempting to recover any fees that are the subject of this Paragraph. This attorney fees provision does not apply to any other sections of this Agreement.

3.7.3 **Attachment Points.** If an Attachment Point currently exists on the Backbone and if space is available for Lessee to attach at that location, then the charge to Lessee is the cost of splicing plus fifteen percent (15%). If an Attachment Point is not available and if the City agrees to construct an Attachment Point at the location desired by Lessee, then upon installation of such Attachment Point by City and Acceptance of such Attachment Point by Lessee in accordance with Article 4, Lessee shall pay all the costs of engineering services and costs of construction of that Attachment Point, plus fifteen percent (15%). As other Lessees attach to that Attachment Point, Lessee shall be reimbursed the Reimbursable Amount.

3.7.4 **Backbone Extensions.** Assuming the City has adequate resources available, the City may agree to construct a Backbone Extension at City's expense upon a request made by Lessee pursuant to Exhibit 10. If the City does not then have adequate resources to construct the Backbone Extension immediately upon Lessee's request, City may nonetheless agree to construct the Backbone Extension at Lessee's expense. Upon installation of such Backbone Extension by City and Acceptance of such Backbone Extension by Lessee in accordance with Article 4, Lessee shall pay all the costs of engineering services and costs of construction of that Backbone Extension, plus fifteen percent (15%). As other Lessees lease fiber on that Backbone Extension, Lessee shall be reimbursed the Reimbursable Amount.

3.7.5 **Service Drops.** Lessee shall pay to City the cost of engineering services and the cost of construction plus fifteen percent (15%) of any Service Drop. Though, by definition, it is not anticipated that any other lessee will desire to use that Service Drop, if a subsequent lessee does desire Leased Fiber in or to the Service Drop, this Lessee shall be reimbursed the Reimbursable Amount.

3.7.6 **Private Property Access and/or Lateral Extensions.** If a Private Property Access or Lateral Extension currently exists from the Backbone to a Building Entrance and if space is available on that Private Property Access or Lateral Extension, then the charge to Lessee is the cost of splicing plus fifteen percent (15%). If a Private Property Access or Lateral Extension is not available and if the City agrees to construct a Private Property Access or Lateral Extension at the location desired by Lessee, the City may treat that Private Property Access or Lateral Extension as a Backbone Extension or Service Drop, depending upon whether other potential lessees desire to go to that building. If the City chooses to treat the Private Property Access or Lateral Extension as a Backbone Extension, then City shall pay the costs of construction. If the City chooses to treat the Private Property Access or Lateral Extension as a Service Drop, then Lessee shall pay all the costs of engineering services and costs of construction of that Private Property Access or Lateral Extension, plus fifteen percent (15%). As other Lessees enter that Private Property Access or Lateral Extension, Lessee shall be reimbursed the Reimbursable Amount. Lessee may cancel this Lease as to a Private Property Access or

Lateral Extension upon thirty (30) days written notice to the City, so long as Lessee has paid City any applicable engineering or construction fees. No Termination fee or other charge will be assessed by City to Lessee for termination of the Private Property Access or Lateral Extension.

3.7.7 **Building Entrances.** The City has obtained Building Entrance to certain privately-owned locations. If the City has fiber available to a Building Entrance, Lessee shall be charged the cost of connecting Lessee to that Building Entrance plus fifteen percent (15%) and any fees charged to the City by the building owner or tenant, which are directly attributable to Lessee's connection at that Building Entrance. If a Building Entrance is not available and if the City believes that other lessees would desire entrance at that location, then the City may agree to negotiate an entrance agreement and construct to and connect to the Building Entrance at the location desired by Lessee. City shall pay the costs of negotiating the entrance agreement and construction to the Building Entrance. Lessee is responsible for obtaining permission to locate Lessee Infrastructure in the building. City will not likely agree to negotiate a Building Entrance at locations other lessees have no interest. Lessee may cancel this Lease to a Building Entrance upon thirty (30) days written notice to the City, so long as Lessee has paid City any applicable engineering, construction fees or connection fees. No Termination fee or other charge will be assessed by City to Lessee for termination of the Building Entrance.

3.8 **Third Party Charges.** Lessee will reimburse the City for charges assessed or imposed on the City by third parties, including but not limited to any fees for Building Entrances directly attributable to Lessee's entrance into that building, which may be incurred by the City in accommodating Lessee's Infrastructure requirements within the City, or as required by law relating to this Agreement. City will advise Lessee, in advance, of potential or anticipated costs imposed by third parties for accommodating Lessee's Infrastructure and which are directly attributable to Lessee, to the extent City is aware of those charges in advance and can obtain an estimate from that third party. If Lessee does not agree to the charge imposed by the third party, then Lessee shall be responsible for negotiating with that third party and shall hold the City harmless from any claim of delay in completing the subject work due to Lessee's negotiations of the third party charges. If Lessee chooses not to pay the third party charges, then City shall not perform the work requested by Lessee.

3.9 **Taxes and Franchise Fees.** None of the Lease Payments charged to Lessee pursuant to this Agreement includes any tax or franchise fee charged by any governmental entity. Lessee shall be solely responsible for paying any and all taxes, franchise fee or assessments by any governmental entity related to the Leased Infrastructure, if any, when due.

3.9.1 The City represents that currently, there is no tax imposed by the City that would be levied on Lessee associated with this Agreement. The City does charge a franchise fee for use of fiber to operate as a cable service, and Lessee

must enter into a franchise agreement with City in order to provide those services within the City of Santa Clara. Providing cable services without a franchise agreement constitutes a material breach of this Agreement.

3.9.2 Notice is hereby given that the property interest vested in Lessee may create a possessory interest which entities (other than the City) may deem subject to property taxation and Lessee may be subject to payment of property taxes therefore.

3.9.3 Lessee shall be solely responsible for opposing, protesting, appealing or challenging any tax or franchise fee imposed or asserted by any entity.

ARTICLE 4. CONSTRUCTION AND ACCEPTANCE OF LEASED FIBER

4.1 **Notice of Completion.** City has constructed and shall continue to cause to be constructed the Fiber Optic Infrastructure. City shall notify Lessee in writing upon the completion of construction of the configuration of all of the Leased Infrastructure as set forth in Exhibits 3 and 4 attached hereto ("Notice of Completion"). Unless the Parties otherwise agree, the first Notice of Completion shall not be sent to Lessee until all items listed in Exhibits 3 and 4 have been completed by City. Charges for any Leased Fiber shall commence on the Date of Delivery of such Leased Fiber. Thereafter, if Lessee requests pursuant to an executed Exhibit 10, that City construct and/or lease to Lessee additional Leaseable Fiber, Attachment Points, Backbone Extensions, Service Drops, Private Property Access, Lateral Extensions, or Building Entrances, the City shall provide Lessee with a Notice of Completion as soon as construction is complete. The City shall use its commercially reasonable efforts to complete construction of the Leased Infrastructure as set forth in Exhibits 3 and 4, or any future Leased Fiber, Attachment Points, Backbone Extensions, Service Drops, Private Property Access, lateral Extensions, or Building Entrances added by an executed Exhibit 10. Upon the completion of construction of the foregoing, the City shall perform testing in accordance with standards and procedures enumerated in Exhibit 7.

4.2 **New Construction.** Upon the completion of construction of any Leased Fiber, Attachment Point, Backbone Extension, Service Drop, Private Property Access, Lateral Extension, or Building Entrance, the City shall promptly conduct construction tests, at its sole cost and expense, in order to verify that the particular item meets the Performance Specifications set forth in Exhibit 7 ("Post-Construction Testing"). The results of such tests shall be provided to Lessee concurrently with the Notice of Completion, at no cost to Lessee.

4.3 **Existing Fiber Optic Infrastructure.** If any Leased Fiber, Attachment Point, Backbone Extension, Service Drop, Private Property Access, Lateral Extension, or Building Entrance is to be provided from the Fiber Optic Infrastructure that is not newly constructed, the City shall perform verification testing to verify that the item to

be leased meets the Performance Specifications set forth in Exhibit 7 ("Verification Testing"). The results of such tests shall be provided to Lessee, within five (5) business days of completion thereof, at no cost to Lessee.

4.4 **Lessee's Acceptance Testing.** Lessee may conduct its own testing of the Leased Infrastructure or of additional Leased Fibers, Attachment Points, Backbone Extensions, Private Property Access, Service Drops, lateral Extensions, or Building Entrances added by an executed Exhibit 10 upon receipt of the Notice of Completion or Verification Testing as to any of those items in order to verify that the Leased Infrastructure or individual item meets the Performance Specifications set forth in Exhibit 7 ("Acceptance Testing"). Lessee is solely responsible for ensuring that Lessee has installed the necessary Lessee Infrastructure or obtained required entrance agreements to perform its own Acceptance Testing.

4.4.1 The time for Lessee performing Acceptance Testing shall not be extended because Lessee has failed to install Lessee Infrastructure or obtain entrance into private locations (unless City has specifically assumed, in writing, that responsibility for gaining that entrance into a Building Entrance or Private Property Access). Lessee shall complete Acceptance Testing within thirty (30) calendar days of the later of receipt of (a) the Notice of Completion as to the Leased Infrastructure or any additional Leased Fibers, Attachment Points, Backbone Extensions, Private Property Access, Service Drops, Lateral Extensions, or Building Entrances added by an executed Exhibit 10 or (b) receipt of the results of the City's Post-Construction or Verification Tests as to the same.

4.4.2 The City will cooperate in conducting such tests, and participate in joint testing, if requested, in each case at Lessee's sole cost and expense. Lessee shall provide City with no less than forty-eight (48) hours notice of the time it desires City to participate in joint testing.

4.4.3 If Lessee shall have failed to complete Acceptance Testing within the time period set forth in this Article, it shall be deemed to have waived its rights to conduct Acceptance Testing as to the Leased Fibers, Attachment Points, Backbone Extensions, Private Property Access, Service Drops, Lateral Extensions, or Building Entrances that are the subject of the Notice of Completion and said items shall be deemed accepted by Lessee upon expiration of such thirty-day period;

4.4.4 If Lessee chooses to perform Acceptance Testing, it may do so and then notify the City within thirty (30) calendar days of the later of the date of receipt of (a) the Notice of Completion as to the Leased Infrastructure or any Leased Fiber Attachment Point, Backbone Extension, Private Property Access, Service Drop, Lateral Extension, or Building Entrance added by an executed Exhibit 10 or (b) the results of the City's Post-Construction or Verification Tests as to the same. Lessee shall indicate in a Notice of Acceptance/Rejection (Exhibit 6) what portion of the Leased Infrastructure

(Exhibit 3 and 4) or which of the Leased Fibers, Attachment Point, Backbone Extension, Private Property Access, Service Drop, Lateral Extension, or Building Entrance added by an executed Exhibit 10, failed to pass the Acceptance Testing, and the reason therefore.

4.5 **Notice of Rejection.** In the event Lessee delivers a Notice of Rejection to City, the City shall use its commercially reasonable efforts to correct or repair Leased Fibers, Attachment Points, Backbone Extensions, Private Property Access, Service Drops, Lateral Extensions, or Building Entrances that are not in compliance. Thereafter, City shall again give Lessee a Notice of Completion with respect to the particular item previously indicated in Lessee's Notice of Rejection as not in compliance. The foregoing procedure shall apply again and successively thereafter until City has remedied all defects or failures that are not in conformance with the Performance Specifications of Exhibit 7. Once compliance with the Performance Specifications set forth in Exhibit 7 is achieved and demonstrated by the City, Lessee shall within ten (10) business days execute a Notice of Acceptance with respect to the accepted Leased Infrastructure. Lessee shall not unreasonably withhold acceptance.

4.6 **Use of Fiber.** Unless otherwise agreed by the Parties, Lessee may not use any part of the Leased Infrastructure as set forth in Exhibits 3 and 4 until acceptance of the entire Leased Infrastructure has been received by the City from Lessee.

4.6.1 If the majority of the Leased Infrastructure can be completed by City by a certain date, but certain Backbone Extensions, Service Drops, Private Property Access, Lateral Extensions, or Building Entrances cannot be completed until a much later date, the Parties can mutually agree that the City can issue one Notice of Completion for the majority of the Leased Infrastructure, and later Notices of Completion for the Backbone Extensions, Service Drops, Private Property Access, Lateral Extensions, or Building Entrances that cannot be delivered at the same time. If the Parties so agree, that agreement shall be set forth in writing, preferably in Exhibit 4. Upon issuance of a Notice of Completion for the initial portion of the Leased Infrastructure, Lessee and City shall be subject to all the requirements of paragraphs 4.1 through 4.5. Upon receipt by the City of the Notice of Acceptance as to the agreed portion of the Leased Infrastructure, Lessee may use that portion of the Leased Infrastructure and its Lease Payment for that portion of the Leased Infrastructure delivered, is due.

4.6.2 Lessee may not use Leased Infrastructure to provide cable services unless and until it has obtained a franchise from the City of Santa Clara. The City reserves the right to require a franchise for any application that may later be allowed by changes in federal or state law.

4.7 **Date of Delivery.** Upon the use of by Lessee of any Leased Fiber or upon receipt by the City of an executed Notice of Acceptance, the Leased Infrastructure that is the subject of the Notice of Acceptance shall be deemed to have been ready for

immediate use and interconnection by Lessee to Lessee's Infrastructure as of the Date of Delivery. The earliest of the date on which Lessee first uses the Leased Fiber, or the date that the City sent the Notice of Completion to Lessee (which was subsequently executed by Lessee as accepted) shall be the "Date of Delivery" of the affected Leased Infrastructure and payment shall be due.

4.8 **As-Built Drawings.** The City provides as-built drawings to Lessees only for Service Drops constructed for that Lessee. The City will not share detailed as-built drawings of its Fiber Optic Infrastructure with the public, nor will it provide those as-builts to its Lessees. A general configuration of Lessee's route is attached hereto as Exhibit 2.

ARTICLE 5. LESSEE'S INTERFACE WITH CITY'S INFRASTRUCTURE

5.1 Lessee's Fiber Route.

5.1.1 Any time Lessee applies for a permit for additional fiber routes within the City boundaries for interconnection to the Fiber Optic Infrastructure, Lessee shall, in addition to any other required City permit processes, submit an "Engineering Information Form", substantially in the form of Exhibit 8 to the person identified in Exhibit 9. Lessee shall also provide interconnection status information as may be requested by the Director from time to time. To the extent Lessee deems any such information is Confidential Information, it shall comply with the provisions of Article 22 of this Agreement. Following completion of the installation of Lessee's Infrastructure and fiber route within the City, Lessee shall, within thirty (30) calendar days of completion and to the extent necessary, identify the location of Lessee's Infrastructure located within the City, providing the City with information accurately reflecting the actual location of Lessee's Infrastructure and fiber route configurations located within the City ("As-Built Infrastructure"). Lessee's As-Built Infrastructure will be treated as Confidential Information, will be labeled as such and shall be treated as set forth in Article 22 below. Lessee's As-Built Infrastructure shall be used solely by the City for purposes of joint testing and trouble diagnosis (e.g., to determine trouble origination as City or Lessee's facility problem).

5.1.2 From time to time either Party may request that the other Party perform installation work on its behalf as an adjunct to installation work occurring and related to their respective Infrastructures. Each Party will cooperate with the other in accommodating such requests, but is not obligated to do so if it is deemed to introduce delays or complications to the planned work. Any costs incurred by one Party on behalf of the other Party shall be documented and then reimbursed by the Party receiving the benefit, with the exception of personnel time or overhead unless each Party has explicitly agreed that personnel time be included and that time exceeds eight (8) hours.

5.2 **Lessee's Infrastructure.** Lessee shall assume ownership, installation, and maintenance responsibility for Lessee's Infrastructure beginning at least one foot from City-owned splice cases, pull boxes, or other City-owned structures.

5.2.1 At each Attachment Point, the City shall provide a capped, stubbed-out conduit, one-foot in length, from the Fiber Optic Infrastructure to the Demarcation Point.

5.2.2 At each capped, stubbed-out conduit, City shall provide a fiber drop cable in the amount of thirty (30) feet. In accordance with paragraph 1.6.2 Lessee, and not City, shall be responsible for splicing its own fiber to that thirty-foot drop, unless the Parties agree otherwise in writing

5.2.3 Lessee shall be responsible for installation and interconnection of fiber within structures located on Lessee's side of the Demarcation Points, which structures are the sole responsibility of Lessee.

5.2.4 Installation of conduit, fiber, splice cases and other structures on Lessee's side of the Demarcation Points shall be the responsibility of Lessee, and title shall be vested with Lessee, if and as appropriate.

5.3 **Lessee Covenants.** Except as expressly authorized by applicable laws or this Agreement, in the exercise and performance of its rights and obligations under this Agreement, Lessee covenants and agrees:

5.3.1 Lessee shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. Lessee shall comply with any City permit issued to Lessee in connection with the location of Lessee's Infrastructure within the public right-of-way. Lessee shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of Lessee's Infrastructure to be located within the City;

5.3.2 Lessee shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties. Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf, other than the City, its employees, subcontractors, and agents, within the public right-of-way or to permit anyone under its direct control or doing work on its behalf , other than the City, its employees, subcontractors, and agents, to do anything that which may in any way obstruct or interfere with the rights of any person located within the public right-of-way, or injure them, or use or allow the public right-of-way to be used by under its direct control or

doing work on its behalf for any improper or unlawful purpose. Notwithstanding the foregoing, this shall not be construed to prohibit Lessee from installing Infrastructure within the City or otherwise exercising its rights and carrying out its obligations under this Agreement, provided however that this sentence is not intended nor shall it be construed to increase Lessee's rights under this Agreement.

5.3.3 Lessee shall keep all parts of the Leased Infrastructure that belong to City free of any liens that may be created or which may attach as the result of the acts or omissions of Lessee, its employees, subcontractors or agents. If such lien is filed, Lessee shall indemnify and hold harmless City from any and all costs to remove such lien including but not limited to reasonable attorneys' fees through appeal;

5.3.4 Lessee shall be permitted to pledge this Agreement as an asset for purposes of obtaining financing; however, if any entity to whom this Agreement has been pledged actually perfects its interest therein, that entity must comply with the provisions of Article 17 "Assignment". Lessee may not, under any circumstances pledge the actual dark fiber or Leased Infrastructure as an asset to anyone for any purpose. The Leased Infrastructure is public property owned by the City and shall not be pledged to any party.

5.3.5 Lessee shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf, other than the City, its employees, subcontractors, and agents, in, on or about the Leased Infrastructure or Lessee's Infrastructure located within the City, which is prohibited by, or will in any way conflict with, any laws now in force by the City or which may hereafter be enacted or promulgated by an entity other than the City. However, if any laws, rules, ordinances, resolutions, or other regulations which are enacted or promulgated by a governmental entity (other than the City) after the Effective Dated of this Agreement materially (a) change the economics of this Agreement, or (b) interfere
with Lessee's rights provided hereunder, City shall provide Lessee sixty (60) days notice of the required change and if the Lessee does not agree to comply, Lessee shall have the right to terminate this Agreement without penalty.

5.3.6 Lessee shall not, in connection with this Agreement, commit, cause, maintain or permit nor suffer, or allow to be committed, caused, maintained or permitted by anyone under its direct control or doing work on its behalf, other than the City, its employees, subcontractors, and agents, any waste, abuse or destructive use within the public right-of-way, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any other person lawfully using the public right-of-way;

5.3.7 Lessee shall be solely and fully responsible for the reporting of all hazardous materials releases to the appropriate agencies, when such releases are caused by, or result from, Lessee's activities or by anyone under its direct control or

doing work on its behalf other than the City, its employees, subcontractors, and agents. Lessee shall take all necessary precautions to prevent any hazardous materials used by Lessee or by anyone under its direct control or doing work on its behalf, from entering into any storm or sewage drain system or from being released within the public right-of-way.

5.4 **City Covenants.**

5.4.1 City shall comply with applicable federal, state and local laws in the exercise and performance of its rights and obligations under this Agreement. City shall comply with any City permit issued in connection with the Fiber Optic Infrastructure within the public right-of-way. City shall obtain, as required, any and all necessary approvals for the design, construction, installation, operation and testing of City's Infrastructure to be located within the City;

5.4.2 City shall not do or permit anything to be done by anyone under its direct control or doing work on its behalf in, on or about the Leased Infrastructure or Lessee's Infrastructure located within the City, which is prohibited by or will in any way conflict with any laws now in force or which may hereafter be enacted or promulgated. However, if any laws, rules, ordinances, resolutions or other regulations which are enacted or promulgated by a governmental entity (other than the City) after the Effective Date of this Agreement materially (a) change the economics of this Agreement, or (b) interfere with Lessee's or Lessor's rights provided hereunder, City shall provide Lessee sixty (60) days notice of the required change and if the Lessee does not agree to comply, City shall have the right to terminate this Agreement without penalty.

5.5 **Cooperation.** Lessee shall us reasonable commercial efforts to cooperate with the City concerning construction, installation and testing activities involving other leases or licensees under separate agreements with the City, in each case at the City's sole cost and expense. City will provide Lessee with reasonable advance notice, in writing, of the necessity for any such cooperation. The City shall reimburse Lessee for any and all documented direct costs and expenses incurred as a direct consequence of the City requesting such cooperation; however, Lessee shall not charge the City for personnel time or overhead unless City explicitly requested that personnel time and that time exceeds 8 hours.

5.6 **No Access by Lessee.** Other than as authorized in this Agreement, Lessee is prohibited from accessing, directly or indirectly, the Fiber Optic Infrastructure, or any part thereof, the transmission pathway, or any part thereof, or any City electric or other utility facility on City's side of the Demarcation Points. Unauthorized access by Lessee to, or use of, the Fiber Optic Infrastructure, the transmission pathway, or any City electric or other utility facility shall constitute a material breach of this Agreement. City may terminate for cause this Agreement upon the delivery of written Notice of Termination to Lessee, effective thirty (30) calendar days after its receipt by Lessee.

ARTICLE 6. FIBER OPTIC INFRASTRUCTURE MONITORING, MAINTENANCE, REPAIRS AND ALTERATIONS.

6.1 **General.** City shall maintain the Fiber Optic Infrastructure in good operating condition and in accordance with the specifications set forth on Exhibit 7, throughout the term of this Lease.

6.2 **Contact Persons or Representatives**

6.2.1 Lessee shall furnish to the City, and update as changes occur, the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone number, and paging device number) of a representative of Lessee who shall be kept informed of the City's maintenance schedules ("Lessee's Representative"). This information shall be provided on the Personnel Contact Form set forth as Exhibit 9 and provided to the City's Representative. If Lessee fails to keep the City informed of its current Representative, then the City shall not be held liable for any failure to meet any notification or response provisions, resulting directly therefrom.

6.2.2 City shall provide to Lessee's Representative a 24/7/365 telephone number Lessee may call to report any perceived damage to or failure, interruption or impairment of the Leased Infrastructure ("City's Representative"). This information shall be provided on the Personnel Contact Form set forth as Exhibit 9 and provided to the Lessee's Representative.

6.3 **Routine Monitoring.**

6.3.1 The City shall monitor at least one fiber in the Fiber Optic Infrastructure for cable continuity on a 24-hour day, seven days per week, basis. The City shall not monitor the Leased Fibers.

6.3.2 The City, at its sole cost and expense, shall undertake timely maintenance and repairs to cure deficiencies in the Fiber Optic Infrastructure. Lessee is responsible for all maintenance and repairs on Lessee's side of the Demarcation Points. Where routine monitoring reveals a potential maintenance issue, each Party shall, with regard to their respective Infrastructure, take reasonable and timely steps to address the issue prior to it affecting the operation or functionality of their respective Infrastructures. With regard to emergency repairs, see section 6.5 below.

6.3.3 Lessee may conduct independent diagnostic testing, fault isolation, repair verification, and end-to-end network testing, as it deems appropriate, on Lessee's side of the Demarcation Points. Lessee may notify the City's Representative in writing if it is determined as a result of its independent

testing and surveillance programs, review of City-provided reports, or otherwise, that any part of the Leased Infrastructure does not conform to the performance standards set forth in Exhibit 7. The Parties shall confer to expedite trouble resolution and resolve possible differences in interpretation of trouble reports.

6.4 **Routine Operations.** City, at its sole cost and expense, shall schedule and perform Fiber Optic Infrastructure alterations, and routine operations, maintenance and repairs. City shall identify the time, location, and nature of each alteration or maintenance and repair job potentially affecting the Leased Infrastructure and/or Lessee's Infrastructure, and notify Lessee's Representative, via E-mail or facsimile transmission, at the earliest possible time but not less than 96 hours prior to the scheduled time.

6.5 **Emergency Repairs.**

6.5.1 **Scope of Work.** City shall provide all equipment, manpower, supervision, certified fiber optic splicers, consumable materials, equipment, tools, construction equipment and machinery, utilities, transportation, any and all applicable taxes, and other facilities and work as necessary for the proper execution and completion of temporary and permanent emergency restoration for operation of the fiber optic communications network, as outlined in the following sections, to the satisfaction of Lessee for the Work performed under this Agreement.

6.5.1.1 The Work consists of City providing emergency maintenance response and restoration services, including appropriate supervision, technical expertise, labor, equipment, and materials to assess and restore functionality to City's fiber optic network and facilities whenever necessary. Emergency maintenance provided in this section does not apply to fiber optic facilities not owned by the City, but owned and operated by the Lessee or third parties.

6.5.1.2 Execution of the Work shall include, at a minimum, the ability to respond as required herein upon report of damage to City's Fiber Optic facilities and to perform:

6.5.1.2.1 Underground and aerial defect discovery work to ascertain the extent of damage to fiber optic cables and/or facilities.

6.5.1.2.2 Underground Trenching and placement/repair of conduit and infrastructure City's Standards. *NOTE: The City construction standards and specifications may be obtained from the City Engineering Department at engineering@santaclaraca.gov.*

6.5.1.2.3 Placement of underground fiber optic cable and facilities in conduit system.

6.5.1.2.4 Setting poles and/or repair of aerial facilities for fiber optic cable.

6.5.1.2.5 Placement of aerial fiber optic cable poles in compliance with California Public Utilities Commission General Order No. 95.

6.5.1.2.6 Splicing, termination and testing of fiber optic cable to City's Fiber Optics Standards.

6.5.2 **City's Serviceability Requirements.** City's fiber optic network shall be the only system eligible for service under this Agreement.

6.5.3 **City's Service Requirements.** City agrees to provide, and Lessee agrees to accept service according to the following standards:

6.5.3.1 **Emergency Service Definition**: An emergency is defined as an abrupt failure of fiber optic cable functionality. City will provide emergency restoration services to splice or bridge around the fiber failure. This service will be provided for all fiber optic cable up to and including patch panel terminations.

6.5.3.2 **Point of Contact**: City will provide a designated point of contact available by direct telephone service to initiate restoration service and from that point on will provide a designated point of contact by direct telephone service at the restoration site until all temporary or permanent restoration is complete. Lessee will provide an authorized Representative as a designated point of contact to the City to exchange required communications regarding restoration during the Emergency Service.

6.5.3.3 **Coverage Area and Time**: City shall provide Emergency Restoration Services for its Santa Clara network. City Emergency Restoration Services will be available 7 days/week, 52 weeks/year, 24 hours/day, including City's observed holidays.

6.5.3.4 **Response Time**: Upon receipt of notification from Lessee's authorized representative to City indicating the existence of a potential problem, City's restoration supervisor shall be at the City Fiber Optic Central Office or other agreed upon location in Santa Clara within two (2) hours. City shall have appropriate restoration/repair personnel and equipment on site to begin restoration of fiber optic network functionality within four (4) hours of such notification.

6.5.3.5 **Status Reports**: City will initiate no less than hourly and on demand status reports to the designated Lessee's Representative during emergency temporary restoration. City will communicate all information regarding the condition and restoration through the City's Representative

6.5.4 **Network Demarcation.** Emergency restoration services are in support of City's backbone single mode fiber cable, service lateral cables, and intra-building distribution cables. This agreement does not provide support for Lessee's equipment and/or network.

6.5.5 **Permanent Restoration.** After temporary restoration is complete, a permanent repair and site restoration plan will be proposed by City within 2 days. Upon City's approval this work will be scheduled and initiated.

6.5.6 **Additional Information.** Identification of communication system, contact and method to be used during Temporary Emergency Restoration activities (e.g., two-way radios and/or mobile phones).

6.5.7 **Route Modifications.** The City, at its sole cost and expense, may upon reasonable notice, modify the Fiber Optic Infrastructure as conditions and circumstances may warrant. These modifications may cause portions of the Fiber Optic Infrastructure to be relocated, permanently or temporarily, to one or more alternate locations within the public right-of-way, public utility easements, and licensed service properties.

6.5.8 Relocation of Leased Infrastructure shall not affect the price Lessee pays for use of that Infrastructure.

6.5.9 The City shall use its commercially reasonable efforts to ensure such action shall not directly or substantially interfere with the performance or operations of Lessee's Leased Infrastructure and/or Lessee's Infrastructure. Lessee shall cooperate with the City to effect any such modifications, in each case at the City's sole cost and expense.

ARTICLE 7. ACCESS TO LESSEE'S INFRASTRUCTURE

7.1 **Grant of Access.** From time to time access to Lessee's Infrastructure located within the City may facilitate scheduled and non-scheduled maintenance and repair work associated with the Leased Infrastructure and related Fiber Optic Infrastructure. Lessee will cooperate with the City, its officers, employees, agents, representatives and contractors to allow ingress and egress for repairs to Leased Infrastructure and the Fiber Optic Infrastructure, at City's sole cost and expense. Notwithstanding the foregoing, the City shall have no right to alter, maintain or repair Lessee's Infrastructure. In no event shall the City, its officers, employees, agents, representatives, contractors, or subcontractors have access to Lessee's Infrastructure unless a representative of Lessee is present.

7.2 **Written Notice.** So long as an emergency situation does not exist, the City shall provide a written request at least forty-eight (48) hours notice in advance of any required ingress to Lessee's Infrastructure located within the City. If an emergency situation exists, the City shall provide a verbal request to the person identified pursuant to paragraph 6.2.1.

ARTICLE 8. JOINT MARKETING

The City will cooperate with Lessee in joint marketing efforts to the extent that this does not conflict with the City's interests or those of other network service providers who otherwise may lease capacity from the City.

ARTICLE 9. UTILITIES AND OTHER SERVICES

Other than the services described herein, no other utility or other service is provided by the City to Lessee pursuant to this Agreement. Other such services, if provided, are either governed by the City's Rules and Regulations or by separate agreement between the Parties.

ARTICLE 10. ADEQUATE ASSURANCE

Within seven (7) business days of the Effective Date or within seven days of the date on which this Agreement is presented to the City Council, whichever is later, Lessee shall furnish to City, and maintain throughout the remainder of the Term of this Agreement, Adequate Assurance in the form of a cash deposit equal to the value of two (2) quarters Lease Payment, securing the faithful performance by Lessee of its obligations under this Agreement. Two (2) years from the Effective Date of this Agreement provided that Lessee has not been in material breach of this Agreement, the City shall return one (1) quarter of said cash deposit and continue to hold three (3) months cash deposit through the remainder of the lease. If Lessee has been in material breach of this Agreement during the two years the cash deposit is held, the City is entitled to hold the cash deposit for one (1) additional year, and the City shall continue to hold the cash deposit until Lessee has not been in breach for eighteen (18) consecutive months.

ARTICLE 11. DEFAULT AND REMEDIES FOR DEFAULT

11.1 Default – Failure to Make Lease Payment. Failure to make any Lease Payment shall be a material breach of the Agreement, subject to the following provisions.

a. If Lessee fails to make any Lease Payment within ten (10) business days following the Due Date, City may issue a Notice of Default to Lessee.

b. If Lessee fails to make any Lease Payment within ten (10) business days following the issuance by the City of Notice of Default, City may elect to (1) terminate this Lease, (2) continue attempts to collect the Lease Payment; (3) disconnect leased fiber, and/or (4) draw the amount of the Lease Payment from the Adequate Assurance.

c. If the City elects to disconnect leased fiber, prior to any reconnection Lessee must cure default, refund any amounts deducted from Adequate Assurance, and pre-pay any re-connection or splicing costs in order to continue lease agreement and use of leased fiber.

11.2 Default - Other Grounds. This Agreement may be terminated by either Party ("Non-Defaulting Party") upon the commission of a material breach of this Agreement by the other Party ("Defaulting Party"). "Material breach" includes, but is not limited to, the following:

a. Failure to perform any obligation requiring the payment of money under the provisions of this Agreement, other than failure to make a Lease Payment;
b. Assignment or transfer of Defaulting Party's interest in this Agreement, whether voluntary or involuntary;
c. Assignment of assets for the benefit of creditors;
d. Abandonment of Lessee's Infrastructure in the public right-of-way or a failure to notify the City of such abandonment;
e. Filing of a petition to have a Party to this Agreement adjudicated a bankrupt, or a petition for a reorganization or arrangement under any Law relating to bankruptcy or insolvency,
f. A third party obtains a court order in a court of competent jurisdiction prohibiting the Defaulting Party from performing under this Agreement; or,
g. In the event of any material representation, warranty, or statement made by a Party or Agreement that shall prove to have been incorrect in any material respect when made which adversely affects the rights of others.

11.3 Notice in Event of Default. In the event of a material breach of this Agreement, the Non-Defaulting Party shall give a Notice of Default to the Defaulting Party. The Defaulting Party shall have ten (10) calendar days from receipt of the Notice of Default to cure the material breach.

11.4 Right to Cure. When a cure of a material breach reasonably requires more than ten (10) calendar days, the Defaulting Party shall commence to cure within ten (10) calendar days of receipt of the Notice of Default, and shall thereafter diligently and continuously prosecute such cure to completion. Unless excused by the Non-Defaulting Party in writing, no cure shall take more than thirty (30) days to complete.

11.5 Cumulative Rights and Remedies. The rights and remedies provided by law and under this Agreement are cumulative and either Party may seek the specific performance of the terms of this Agreement, unless this Agreement provides otherwise.

///

///

ARTICLE 12. TERMINATION

This Agreement may be terminated upon the occurrence of any of the following events:

a. Upon occurrence of a material breach as set forth in Article 11 above;

b. Lessee terminates this Agreement for convenience, pursuant to Article 13, for all or a portion of the Leased Infrastructure. In the event such termination pursuant to Article 13 is a partial termination, Lessee shall continue to make quarterly Lease Payments with respect to any Leased Infrastructure that have not been the subject of the termination. However, Lessee does not have the right to terminate this Agreement for convenience as to any stranded fiber, which fiber is stranded due to the manner in which Lessee chose to route or splice the Leased Fiber;

c. City fails to deliver the Leased Infrastructure (excluding any new extensions of new construction to accommodate the unique requirements of Lessee) on or before the date mutually agreed upon by the Parties and set forth in Exhibit 4 or Exhibit 10 unless such failure is due to reasons beyond the control of City or Force Majeure. Such termination shall be without liability to either City or Lessee unless, and to the extent that, the failure to meet the deadline is caused by Lessee;

d. An event of Force Majeure that destroys Lessee's Infrastructure located within the City such that such Infrastructure cannot be repaired, restored or replaced at a reasonable cost within sixty (60) calendar days after an event of destruction. Lessee shall be excused from its obligations to make lease payments during the pendency of a Force Majeure, not to exceed six (6) months from the date of the destruction. Either Party may elect to terminate this Agreement if Lessee does not commence Lease Payments within six (6) months of the date of destruction, in which case no Termination Payment shall be owed by either Party;

e. The City may elect to terminate this Agreement if the Fiber Optic Infrastructure is substantially destroyed by Force Majeure such that it cannot be repaired at a reasonable cost and within six (6) months from the date of destruction, and Lessee shall not owe the City any Lease Payment or shall be entitled to an appropriate credit if prepayments are involved. If the City elects to terminate this Agreement as set forth above, Lessee shall not owe the City any Lease Payment or shall be entitled to an appropriate credit if prepayments are involved, for the period from the date of destruction until the Agreement either is terminated or the Fiber Optic Infrastructure is repaired by the City. Lessee may elect to terminate this Agreement if the Fiber Optic Infrastructure is substantially destroyed such that the City cannot repair the Fiber Optic Infrastructure within sixty (60) calendar days of the date of destruction, in which case no Termination Payment shall be owed by either Party.

ARTICLE 13. TERMINATION PAYMENT

13.1 Lessee may terminate the lease of fiber of any Service Drop, Building Entrance, Lateral Extension, or a Private Property Access to a Building Entrance without penalty and without paying the Termination Payment for that fiber so long as Lessee has fully paid all engineering and construction costs, or accrued third party charges for entrance fees (provided lessee was obligated to pay City for any such engineering and construction costs or accrued third party charges for entrance fees), due to City for that item. Lessee's Lease Payment shall be reduced by the amount of fiber that it no longer leases in that Service Drop, Building Entrance, or Private Property Access to the Building Entrance.

13.2 For termination of this Agreement with regard to any portion of the Leased Infrastructure other than a Service Drop, Private Property Access or a Building Entrance as set forth in paragraph 13.1 above, Lessee may elect to terminate this Agreement for convenience, for all (or a portion of) Leased Fibers. At the time of Termination, Lessee would pay a Termination Fee equal to three times the (apportioned) annual payment due within the subsequent four quarters, or 40 percent of remaining (apportioned) lease payments due under terms of the Agreement, whichever is less. Termination Fees are to be based on current year prices (at the time of Termination) without inclusion of going forward CPI adjustments. Note: Stranded fiber may not be terminated for convenience without Lessee paying a termination fee with respect to such stranded fiber.

ARTICLE 14. LIMITATION OF LIABILITY

14.1 EXCEPT FOR THIRD PARTY CLAIMS WHICH ARE SUBJECT TO ARTICLE 15 AND AS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2 City shall not be liable to Lessee in any manner for any delays and/or lack of completion of construction for reasons constituting a Force Majeure.

14.3 City is not liable to Lessee for damage caused to the Fiber Optic Infrastructure by independent third parties not under contract with the City that are engaged in construction or other business operations which damage the Fiber Optic Infrastructure. City will respond and repair any damage to the Fiber Optic Infrastructure caused by such a third party as if it were an Emergency Repair under Article 6.

14.4 Inability to use the Leased Fiber due to an electrical power outage is not covered by this Agreement. This Agreement is a lease of dark fiber. Any issues arising out of the inability of Lessee to obtain electricity shall be handled under the applicable City of Santa Clara Rules and Regulations if Lessee is also an electric customer of City.

14.5 Neither Party shall be in default in the performance of any obligation under this Agreement when a failure to perform its obligations under this Agreement shall be due to Force Majeure (as defined in Exhibit 1). For the duration of the Force Majeure, but for no longer period, the obligations of the Party claiming the event (other than the obligations to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to the extent required.

14.6 Either Party rendered unable to fulfill any of its obligations by reason of Force Majeure shall give prompt written notice and full details of the event to be confirmed in writing to the other Party, as soon as possible, but in no event later than five (5) days after the occurrence (unless additional time is required by virtue of Force Majeure). The Party claiming Force Majeure shall exercise due diligence to remove such inability within a reasonable time period.

ARTICLE 15. HOLD HARMLESS/INDEMNIFICATION.

15.1 **By Lessee.** Subject to the terms of Section 14, Lessee shall indemnify, defend and hold harmless City, its City Council, commissioners, employees, officers, directors, subcontractors, consultants and agents from and against any and all claims, demands, causes of action, losses, damages, costs and expenses of every kind and character (but excluding any claim of lost profits) arising on account of all personal injury or death or damage to City property caused by or resulting from the acts or omissions of Lessee, its employees, subcontractors or agents.

15.2 **By City.** Subject to the terms of Section 14, City shall indemnify, defend and hold harmless Lessee its employees, officers, directors, subcontractors, consultants and agents from and against any and all claims, demands, causes of action, losses, damages, costs and expenses of every kind and character (but excluding any claim of lost profits) arising on account of all personal injury or death or damage to Lessee's property caused by or resulting from the acts or omissions of the City, its employees, subcontractors or agents.

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

16.1 **By City:** The City represents and warrants:

16.1.1 It is a municipal corporation duly organized and validly existing and in good standing under the Laws of the State of California. It has all requisite corporate power and authority to own its property, real and personal (including but not limited to the Fiber Optic Infrastructure), and operate its business as and where it is now being conducted.

16.1.2 It has the power and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary actions and proceedings. This Agreement and any other instruments, documents or writings to be executed and delivered by the City pursuant to this Agreement, will not conflict with or violate any provision of the Charter of the City of Santa Clara or the Santa Clara Municipal Code and will be legal, valid and binding obligations of the City, and enforceable against the City in accordance with the provisions hereof except as may be limited by applicable laws.

16.1.3 The execution and delivery by the City of this Agreement and of any other instrument, document or writing contemplated by this Agreement will not conflict with or violate or constitute a breach or default under the charter or bylaws of the City, or the provision of any mortgage, trust, indenture, bond, lien, pledge, release, agreement, guaranty, or instrument to which the City is subject.

16.1.4 There are no known unresolved claims or disputes between Lessee and the City. There are no known actions, suits, or proceedings pending or, to the knowledge of the City, threatened against the City that, if adversely determined to the City, would materially and adversely affect the ability of the City to perform its obligations under this Agreement.

16.1.5 The City agrees to obtain and maintain any certificates, licenses, or approvals required by law that relate to its obligations under this Agreement.

16.1.6 City shall maintain the Fiber Optic Infrastructure in good operating condition for normal use as contemplated by the manufacturers and in accordance with the specifications set forth in Exhibit 7. THE CITY OTHERWISE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY BEYOND THE MANUFACTURER'S WARRANTY AS TO THE FITNESS OF ANY MATERIALS, EQUIPMENT OR ANY OTHER PART OR ALL OF THE FIBER OPTIC INFRASTRUCTURE OR THE LEASED INFRASTRUCTURE, CONSTRUCTED OR TO BE CONSTRUCTED. The warranties and remedies set forth above constitute the only warranties and remedies with respect to this Agreement and are in lieu of all other warranties, written or oral, statutory, express or implied, including, without limitation, the warranty of merchantability or fitness for a particular purpose or use.

16.2 **By Lessee:** Lessee represents and warrants:

16.2.1 It is a duly organized and validly existing company in good standing under the Laws of the State of Delaware and authorized to do business in the State of California. It has all requisite corporate power and authority to own its

property, real and personal, and operate its business as and where it is now being conducted.

16.2.2 It has the power and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate actions and proceedings. This Agreement is, and any other instruments, documents or writings to be executed and delivered by Lessee pursuant to this Agreement will be, legal, valid and binding obligations of Lessee, and enforceable against Lessee in accordance with the provisions hereof except as may be limited by applicable laws.

16.2.3 The execution and delivery by Lessee of this Agreement and of any other instruments, documents or writings contemplated by this Agreement will not conflict with or violate or constitute a breach or default under the Articles of Incorporation or bylaws of Lessee or the provision of any mortgage, trust, indenture, bond, lien, pledge, release, agreement, guaranty or instrument to which Lessee is subject.

16.2.4 There are no known unresolved claims or disputes between Lessee and the City. There are no known actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against Lessee that, if adversely determined to Lessee, would materially and adversely affect the ability of Lessee to perform its obligations under this Agreement.

16.2.5 Lessee agrees to obtain and maintain any certificates, licenses or approvals required by law that relate to its obligations under this Agreement.

ARTICLE 17. ASSIGNMENT

17.1 Except as otherwise permitted by this Article, Lessee shall not assign, sublease or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently this Lease or any interest herein to any third party, without the prior written consent of City, which consent shall not be unreasonably withheld.

17.2 Without City's prior consent, Lessee may assign, sublease or otherwise transfer in whole or in part (whether voluntarily or by action of law), directly, indirectly, or contingently this Lease or any interest herein to an Affiliate, so long as that Affiliate provides information to the City within thirty (30) days of the assignment, establishing that it either (i) has the ability to meet the financial obligations under this Lease or (ii) concurrently with the assignment, Lessee assigned to Affiliate the right to the Adequate Assurance provided by Lessee to City pursuant to paragraph 10 herein or (iii) Affiliate has otherwise provided City with substitute Adequate Assurance. If Affiliate fails to meet one of the three criteria set forth above, the Assignment shall be null and void.

17.3 Lessee may assign, sublease or transfer, pursuant to a merger, sale or transfer of all or substantially all of the assets or stock of Lessee, all of its rights and obligations under this Agreement to any party which provides similar services as Lessee, so long as the surviving or purchasing entity assumes, in writing, all of the obligations of Lessee under this Agreement and provides information acceptable to the City within thirty (30) days after the assignment, sublease, transfer, merger or sale, sufficient to satisfy the City that the proposed Assignee can meet those obligations. If the proposed Assignee cannot meet those financial obligations, then Adequate Assurance acceptable to the City will be provided within sixty (60) days of the date of the transfer, merger or sale. If Assignee fails to provide Adequate Assurance, the Assignment shall be null and void.

17.4 Any assignment, transfer, sublease, conveyance, sale, hypothecation or encumbrance hereof by Lessee not authorized by this Article shall be null and void, and, at the option of the City, acting by and through the City Manager with the approval of the City Attorney, shall constitute a material breach of this Agreement by Lessee hereunder;

17.5 Lessee, as assignor, and any person, including an Affiliate, as assignee, to whom the rights and obligations of Lessee under this Agreement are assigned shall be and remain jointly and severally liable for the performance of all obligations of Lessee under this Agreement.

ARTICLE 18. WAIVER

The consent by a Party to any act by the other Party shall not be deemed to imply consent to, or to constitute the waiver of, a breach of any provision of this Agreement nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions of this Agreement be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions of this Agreement.

ARTICLE 19. INSURANCE REQUIREMENTS.

Insurance requirements are not applicable to this agreement.

ARTICLE 20. DISPUTE RESOLUTION.

Any documented dispute between the Parties which arises during the performance of this Agreement and which the Parties cannot then resolve, shall be subject to the following administrative remedy prior to any litigation occurring between the Parties:

20.1 **Internal Resolution.** Both Parties shall attempt to resolve any controversy claim, problem or dispute arising out of, or related to, this Agreement through good faith consultation in the ordinary course of business. In the event that any problem or dispute is not resolved by the project managers of each party, either party may upon written notice to the other request that the matter be referred to senior management

officials within each respective organization with express authority to resolve the problem or issue ("Request for Internal Resolution"). A written Request for Internal Resolution shall be given by either Party within thirty (30) calendar days of the Parties' knowledge of the claim. Senior management officials shall meet or confer at least once in good faith, to negotiate a mutually acceptable resolution within ten (10) business days of the Request for Internal Resolution.

20.2 **Notice.** Senior management officials are required to only meet once, but may mutually agree to meet more than once if it appears that further meetings may successfully resolve the issue. If the Parties do not successfully resolve the dispute by Internal Resolution, then the Party finding the Internal Resolution unsatisfactory shall provide written notice to the other Party, demanding mediation ("Request for Mediation"). The Request for Mediation may not be given prior to the first meeting for Internal Resolution, and shall not be given any later than ninety (90) calendar days following the completion of the first Internal Resolution meeting. The Request for Mediation shall be sent certified mail-return receipt requested to the other Party, and shall set forth all of the issues that Party deems outstanding that must be submitted to mediation. The Party in receipt of the Request for Mediation shall respond within twenty (20) business days listing any issues it deems appropriate for submission to the Mediator.

20.3 **Mediation.** Any controversies between City and Lessee regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach (except those for which the appropriate remedy should be injunctive relief) shall be mediated within sixty (60) calendar days of the date on the written Request for Mediation, or the soonest date thereafter that the mediator is available.

20.4 **Mediator.** Within twenty (20) calendar days or less of the written Request for Mediation, the Parties shall agree on one mediator. If they cannot agree on one mediator within such twenty-day period each Party shall list the names of three (3) potential mediators and shall supply them to the Party demanding the mediation. The Party demanding the mediation shall merge the names of all the potential mediators into a single list, not indicating which Party submitted the name. On that same date as all names are received by the demanding Party, the Parties shall jointly sign a letter directed to the Presiding Judge of the Superior Court of Santa Clara County, requesting that the Judge appoint a mediator from the enclosed list. If the Superior Court refuses to appoint a mediator within ten (10) business days, the Parties shall make the same request of the nearest Judicial Arbitration and Mediation Service, paying whatever fee is required for making the appointment. If a Party refuses or fails to submit three (3) names within the three day period to the Party preparing the letter, then the letter shall be sent on the fifth day without input from the Party failing to submit names. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

20.5 **Costs.** The costs of mediation shall be borne by the Parties equally.

20.6 **Discovery.** If, during any dispute between the Parties, Lessee makes a demand for documents under the Public Records Act, the City shall have reciprocal rights to demand documents from Lessee.

20.7 **Condition Precedent to Filing Suit.** Except as provided in Article 20.3 (injunctive relief), mediation under this section is a condition precedent to a Party filing an action in any court, unless that Party has made demand for mediation and the other Party has failed or refused to engage in mediation. In the event of litigation arising out of any dispute related to this Agreement, the Parties shall each pay their respective attorneys fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

ARTICLE 21. NOTICE

21.1 Unless otherwise stated herein, all notices which shall or may be given pursuant to this Agreement shall be in writing and delivered by means of certified United States Postal Service mail, return receipt requested, or private overnight delivery systems, or by facsimile transmission, provided a copy of the facsimile is also sent on that same date by United States Postal Service mail or by private express delivery systems, addressed as follows:

To City:
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn.: Director of Electric Utility
Telephone No.: (408) 261-5292
Facsimile No.: (408) 249-0217

To Lessee:
BarnesandNoble.com, LLC
122 – 5th Avenue
New York, NY 10011
Attn: Bradley A. Feuer, General Counsel
Telephone No.: (212) 633-3300
Fax No: (212) 463-5677

21.2 Notices shall be deemed received on the same day as a facsimile is sent, the day following the date on which the Notice was sent via an overnight mail service, and five (5) calendar days from the date postmarked by the United States Postal Service. If Notice is given pursuant to two different methods receipt shall be deemed to occur on the earliest date.

ARTICLE 22. CONFIDENTIALITY

22.1 **General.** Lessee acknowledges that City is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et

seq. City acknowledges that Lessee may submit information to the City that Lessee considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civil Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Lessee acknowledges that the City may submit to Lessee information that the City considers confidential or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Any Party desiring to claim that information shared with the other Party is "Confidential Information", shall clearly label written information "Confidential" before releasing it to the other Party, and in the case of oral information, shall state that such information is confidential when given and shall confirm in writing the confidentiality of such information promptly thereafter.

22.2 **Requests Made Under the Public Records Act.** Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a the party disclosing the Confidential Information ("Disclosing Party") as "Confidential Information" (i) that is made under the Public Records Act, and (ii) is not exempt from disclosure under the Public Records Act, the party that is the recipient of the Confidential Information ("Receiving Party"), as soon as is practical but in any event within three (3) business days of receipt of the request, shall notify the Disclosing Party by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed at the end of the Agreement that such request has been made. The Disclosing Party shall be responsible for taking whatever legal steps are necessary to protect information deemed by it to be "Confidential Information" and to prevent release of information to the Requestor by the Receiving Party, including prosecuting any defense that the information demanded is exempt from disclosure under the Public Records Act. The Receiving Party will provide reasonable cooperation and assistance to the Disclosing Party in preventing the release of the Confidential Information without compensation; however, if Disclosing Party requires significant dedication of Receiving Party's time, the Parties shall agree on a fair compensation or limit the hours Receiving Party is taken from duties at its employer. If the Disclosing Party takes no such action within seven (7) days after receiving the foregoing notice from the Receiving Party, the Receiving Party notify Requestor that it requires the allowed ten (10) day extension under the Public Records Act. If Disclosing Party fails to take any action within twenty (20) days of the date on the original Public Records Act demand, then Receiving Party is required by law to comply with the demand and is not required to defend against it.

22.3 **All Other Requests.** Except for disclosures expressly required under the Public Records Act, the Parties acknowledge and agree that any information properly labeled in accordance with paragraph 22.1 and provided now or in connection with this Agreement, [including without limitation, the terms and conditions of this Agreement set forth in Exhibits 3, 4, and 5], shall be considered Confidential Information of the Disclosing Party. [It is acknowledged by the Parties that this Lease Agreement and

Exhibits 1, 2, 6, 7, 8, 9, and 10, are public record.] The Receiving Party shall afford such Confidential Information the same care and protection it generally affords its own confidential and proprietary information (which shall not be less than reasonable care, in any case), and further agrees not to use or disclose to any third party the Confidential Information of the Disclosing Party, except as required for performance of its obligations under this Agreement.

22.3.1 Each Party shall restrict dissemination of Confidential Information to only those persons in its respective organizations, or to its agents, funding partners, fiber optic consultants, legal and financial advisors and lenders who must have access to such Confidential Information in order to perform the obligations required by the Parties under this Agreement or obtain financing; provided, however, that such person or entities shall be made aware of the confidentiality of such information and are subject to or agree to be bound by substantially similar restrictions on it use and disclosure.

22.3.2 Neither Party shall be required to hold confidential any information which (i) is or becomes publicly available other than through the Receiving Party; (ii) is independently developed by the Receiving Party; (iii) becomes available to the Receiving Party without restriction from a third party that has no duty of confidentiality with respect to such information; or (iv) is legally required to be disclosed (including securities and regulatory filings and statements), provided that in such circumstances the Receiving Party first provides the Disclosing Party with notice of such required disclosure and takes reasonable steps to allow the Disclosing Party to seek a protective order with respect to the Confidential Information. The Receiving Party will cooperate and assist the Disclosing Party in connection with such protective order at the Disclosing Party's request as detailed in paragraph 22.2 above.

22.4 **Permitted Disclosures:** Notwithstanding the other provisions of this Article and without waiver of any obligations hereunder, the City may disclose the identity of Lessee as a customer of City, and Lessee may disclose the identity of City as a supplier of Lessee. The body of this Agreement shall be public record, but Exhibits 3, 4, and 5 shall be held as confidential. No other disclosures, including press releases or other public announcements about this Agreement may be disclosed, except with the prior written consent of the Parties hereto.

22.5 **General. Confidential information shall be deemed to be the property of the Disclosing Party.** All Confidential Information, unless otherwise specified in writing, shall be used by the Receiving Party only for the intended purpose, and such written Confidential Information, including all copies thereof, shall be returned to the Disclosing Party or destroyed upon the request of the Disclosing Party. If the Receiving Party loses or makes an unauthorized disclosure of Confidential Information it shall immediately notify the Disclosing party and use reasonable efforts to find, retrieve and/or stop the dissemination of such Confidential

Information. The provisions of this Article shall survive expiration or earlier termination of this Agreement.

ARTICLE 23. ENTIRE AGREEMENT

This Agreement, and its Exhibits contain the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

ARTICLE 24. AMENDMENT

This Agreement may not be amended except pursuant to a written instrument signed by each of the Parties.

ARTICLE 25. HEADINGS

The Article headings hereof are inserted for convenience of reference only, are not a part hereof and shall have no effect on the construction or interpretation hereof. All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are incorporated by this reference into this Agreement and shall be deemed a part hereof.

ARTICLE 26. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the Laws of the State of California without regard to its conflict of laws, rules or principles. In the event that suit is brought by a Party, the Parties agree that trial of such action shall be vested exclusively in the state courts of California or in the United States District Court, Northern District of California. This Agreement is entered into in the City of Santa Clara, and shall be performed in the City of Santa Clara, County of Santa Clara, State of California.

ARTICLE 27. SEVERABILITY

If any provision of this Agreement is held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of the remaining portions hereof. To the extent the provisions of this Agreement and any other agreement required to be obtained by Lessee from the City are in conflict, the provisions of the agreement which impose the higher or greater legal duty or obligation shall take precedence.

ARTICLE 28. CONSTRUCTION OF AGREEMENT

28.1. Each Party and its counsel have reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the

drafting Party shall not be employed in the construction and interpretation of this Agreement.

28.2 For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as an official holiday by the City, the time for performance shall be extended to the following business day.

(Continued on Page 39)

///

///

///

///

///

///

///

///

///

///

28.3 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the City and Lessee that this Agreement shall become operative on the Effective Date first set forth in the preamble, above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

SIGN HERE

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

BARNESANDNOBLE.COM, LLC
a Delaware limited liability company

By:
Name: DAVID DEASON
Title: Vice President – Development
Address 2400 Dallas Parkway, Suite 320
Plano, TX 75093
Telephone: (972) 543-2379
Fax: (927) 473-6261

"LESSEE"

S:\Attorney\AGREEMENTS\Fiber Optic\SVP Fiber Lease.doc

City of Santa Clara
&
BarnesandNoble.com, LLC
Fiber Lease Agreement

LIST OF EXHIBITS

Exhibit 1 Definitions

Exhibit 2 Map (confidential)

Exhibit 3 Fiber Miles (confidential)

Exhibit 4 Attachment Points, Service Drops & Backbone Extensions (confidential)

Exhibit 5 Lease Payment & Term (confidential)

Exhibit 6 Notice of Completion and Notice of Acceptance/Rejection

Exhibit 7 Fiber Specifications, Performance Standards and Acceptance Testing

Exhibit 8 Engineering Information Form

Exhibit 9 Personnel Contact Form

Exhibit 10 Request Form

BarnesandNoble.com, LLC
EXHIBIT 1
DEFINITIONS

Acceptance
Acceptance of the Fiber Infrastructure may be made by Lessee signing a Notice of Acceptance or Lessee's first use of the Fiber Infrastructure, for other than testing purposes.

Acceptance Testing
The testing conducted on any Leased Fibers prior to acceptance by Lessee in order to verify that the Leased Fibers meet the performance specifications set forth in Exhibit 7.

Additional Attachment Points
Attachment Points requested by Lessee, and agreed to by the City, by amendment to this Agreement after the Effective Date.

Additional Backbone Extension(s)
Backbone Extensions requested by Lessee, and agreed to and built by the City, by amendment to this Agreement after the Effective Date.

Additional Leased Fiber(s)
Leaseable Fibers leased to Lessee by amendment to this Agreement after the Effective Date.

Additional Leased Infrastructure
The combination of any Leased Fibers, Attachment Points, Backbone Extensions, Service Drops, Private Property Access, Lateral Extensions or Building Entrances that are later added to this Agreement by the Parties executing one or more versions of Exhibit 10.

Additional Service Drop(s)
Service Drops requested by Lessee, and agreed to and installed by the City, by amendment to this Agreement after the Effective Date.

Affiliate
A company that has some form of ownership in common with Lessee, such as a parent company or subsidiary of Lessee or Lessee' parent company.

As-built Infrastructure
The actual location of Lessee' Infrastructure and fiber routes following construction.

Attachment Point(s)
Existing or new fiber optic pullboxes located on the Fiber Optic Infrastructure and delineated in Exhibit 4 where Lessee will be allowed to connect its facilities to the Leased Fibers. Attachment Points are owned by the City.

Authorized Representative
A person legally authorized by Lessee to bind Lessee to the terms of a contract.

Backbone
The physical location of the Fiber Optic Infrastructure.

Backbone Extension
A new addition to the Backbone that would benefit other potential lessees and that the City will own and construct. The City may lease Leasable Fibers in any Backbone Extension to third parties other than this Lessee. In general, a Backbone Extension travels to a location that many other potential lessees also desire; it does not travel to a location that is solely used by this Lessee (See Service Drop).

Building Entrance
Attachment of Leasable or Leased Fiber to a meet-me box, panel inside a privately owned building or other privately owned Point of Presence, and allowed by an agreement or written contract between the City and the owner of that Point of Presence or building.

Cable Service
The offering of broadband television and/or streaming video segments of more than ten (10) minutes in duration to the general public or select public by use of a wire, cable, or fiber network

City Fiber
The fiber used by, or reserved, for use by the City for municipal communications purposes.

Date of Delivery
Upon receipt by the City of an executed Notice of Acceptance, the Leased Infrastructure that is the subject of the Notice of Acceptance shall be deemed to have been ready for immediate use and interconnection by Lessee to Lessee's Infrastructure as of the Date of Delivery. The earlier of the date on which Lessee signs the Notice of Acceptance in accordance with Section 4.5 or the date that Lessee begins to use the Leased Fiber for purposes other than testing shall be the "Date of Delivery" of the affected Leased Infrastructure.

Days of Availability
Number of days Leased Fiber is supplied to Lessee or is available for its use after Acceptance by Lessee.

Demarcation Point(s)
The specific points at which the Fiber Optic Infrastructure connects to Lessee Infrastructure and ownership changes.

Due Date
The date on which a Lease Payment or payment on any invoice is due to the City.

Electric Department
The electric utility of the City of Santa Clara, doing business as Silicon Valley Power.

Engineering Information Form
Form used by Lessee to inform the City of Lessee's Planned Infrastructure interconnected with the City's Fiber Optic Infrastructure pursuant to section 5.1

Fiber Optic Infrastructure
Fiber optic cable, splices, associated structures including conduits and boxes, and other facilities designed, constructed and installed by, or on behalf of, the City.

Force Majeure
Any cause beyond the control of the Party affected, and which by exercise of reasonable due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightening, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to the removal of remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

Initial Term
The length of the Initial Term is set forth in Exhibit 5.

Lateral Extensions and/or Private Property Access
Extends from the public right-of-way onto private property and typically terminate at a meet-me box or other form of entrance into a private building.

Leasable Fiber(s)
Any fiber (dark fiber) within the Fiber Optic Infrastructure, other than the City-Fiber (including but not limited to the General Government Network and Electric Department Network), available for leasing or licensing.

Lease
The right and privilege to use Leased Fibers, and any Additional Leased Fibers, during the Term hereof and in accordance with the provisions of this Agreement.

Lease Payment
The quarterly fee owed by Lessee for Leased Fibers as set forth in Exhibit 5 and otherwise established by this Agreement.

Lessee's Infrastructure
Any conduit, fiber, premises, buildings, boxes etc. belonging to Lessee

Leased Fiber(s)
The Leasable Fibers leased to Lessee under this Agreement as depicted on Exhibit 3.

Leased Infrastructure
The combination of Leased Fibers, Attachment Points, Backbone Extensions, Service Drops, Lateral Extensions or Building Entrances which Lessee is entitled to use pursuant to this Agreement or pursuant to an executed Exhibit 10.

Notice of Completion
The notice sent by the City to Lessee upon completion of construction of any configuration of Leased Fibers, a copy of which is attached hereto as Exhibit 6.

Notice of Acceptance/Rejection
The form completed by Lessee notifying the City of those Leased Fibers that are in compliance with the Acceptance Testing and accepted and those that are not in compliance and not accepted, a copy of which form is attached hereto as Exhibit 6.

Notice of Termination
A written notice sent by either Party to the other terminating this Agreement.

Performance Specifications
Those specifications relating to the fiber that are set forth in Exhibit 7.

Preliminary Engineering Services
Providing distances from the City's Fiber Optic Backbone to locations desired by Counterparty, providing information on conduit sizing, location of Attachment Points, feasibility of Backbone Extensions or Service Drops, and an Engineer's estimate for the cost of splicing Counterparty's desired configuration as well as an Engineer's estimate for installing additional conduit, fiber, Attachment Points, Service Drops, Backbone Extensions, Laterals or Building Entrances. Preliminary Engineering Services does not include provisions of any drawings or specifications by SVP to Counterparty or estimates for Counterparty to obtain access to private property or entrance agreements with private building owners.

Post-Construction Testing
Testing conducted by the City immediately following construction of the subject item, (including but not limited to any Leased Fiber, Backbone Extension, Attachment Point or Service Drop) to ensure the performance of said portion meets the requirements set forth in Exhibit 7.

Private Property Access and/or Lateral Extensions.
Extends from the public right-of-way onto private property and typically terminate at a meet-me box or other form of entrance into a private building.

Qualified Party
An entity that it is now, or shall be prior to operating any Telecommunications, duly authorized, licensed or otherwise qualified to operate Telecommunications as required by applicable state or federal laws.

Redundant Paths
The two or more Leased Infrastructure routes connecting portions of Lessee's Infrastructure that provide iterating, spare, or repetitious pathways within that Infrastructure.

Reimbursable Amount
To calculate the Reimbursable Amount, the total cost of engineering services and cost of construction (including the City's fifteen percent fee) shall be divided by the number of fibers running to or through the item constructed in order to obtain a cost per fiber. Each time a new lessee requests fiber in a location that was built by the City but paid for by Lessee, that new lessee shall be charged the Reimbursable Amount for each fiber that new lessee desires in that location. The Reimbursable Amount will be collected by the City on the new lessee's Due Date and paid to Lessee within thirty (30) days thereof.

Renewal Term(s)
One or more Renewal Terms of the Agreement commencing upon expiration of the Initial Term.

Repeated Service Disruption
The simultaneous unavailability of the Redundant Paths of the Leased Infrastructure, for any period of time, due to a problem with the Leased Infrastructure.

Service Drop.
An extension of the Backbone to a location desired only by this Lessee, paid for by this Lessee and used only by this Lessee. A Service Drop may be requested by Lessee pursuant to Exhibit 10. If the City agrees to construct the Service Drop, that Service Drop shall be constructed by the City at Lessee's sole expense.

Telecommunications
Generating, acquiring, storing, transforming, processing, retrieving, utilizing, transmitting or making available information, whether on a common carrier, private carrier, or other

basis, and whether or not subject to certification or regulation by any governmental entity.

Termination Payment
That payment made by Lessee in order to terminate this Agreement for convenience, which payment is a percentage of the remaining Lease Payments that would be paid by the Lessee (without any future CPI adjustments) under the Terms of the Agreement.

Term
The Effective Date until the date on which this Agreement, including any Renewal Terms, terminates.

Tube
A physical grouping of twelve (12) fibers within a cable.

Verification Testing
Testing performed by the City on an existing portion of the Fiber Optic Infrastructure, to ensure that the performance of said portion meets the requirements set forth in Exhibit 7.

BarnesandNoble.com, LLC
EXHIBIT 6

Notice of Completion and Notice of Acceptance/Rejection

NOTICE OF COMPLETION

This Notice of Completion is issued pursuant to that Lease Agreement dated _____, 2008 (the "Agreement") by and Between the City of Santa Clara and **BarnesandNoble.com, LLC**("Lessee"). This Notice of Completion is dated _____ and hereby notifies Lessee that the following items of the Leased Infrastructure identified as follows:

_____

_____

are complete and available for acceptance testing by Lessee.

Please take notice that if Lessee desires to perform Acceptance Testing, it must do so in accordance with Section 4.2 of the Agreement

Signed by Authorized Representative: _____
Type Name: _____
Title: _____
Dated: _____

NOTICE OF ACCEPTANCE/REJECTION

The following items of the Leased Infrastructure are hereby accepted by Lessee as in compliance with the Acceptance Testing:

_____.

The following items of the Leased Infrastructure are found not in compliance with the Acceptance Testing and are not accepted by Lessee: _____ and comprise ____ percent of the total Leased Infrastructure that are the subject of this Notice of Completion.

Briefly describe the condition which is the basis for your claim that said portions of the Leased Infrastructure are not in compliance:

_____

_____

_____

Signed by Authorized Representative: _____
Type Name: _____
Title: _____
Dated: _____

BarnesandNoble.com, LLC
EXHIBIT 7
FIBER SPECIFICATIONS, PERFORMANCE STANDARDS AND ACCEPTANCE TESTING

1.0 CONFIGURATION

Lessor's communications cable plant consists of single mode fiber optic cable, Attachment Points, Lateral Extensions and some Building Entrances at locations throughout the City of Santa Clara.

2.0 FIBER OPTIC CABLE

2.1 Fiber optic cable is run continuously without splices, except for specified splice and slack storage points.

2.2 Fiber optic cable is of suitable manufacture to provide long-term reliable service in a flooded underground ductbank or aerial outside environment.

3.0 PERFORMANCE

3.1 Optical Fiber Performance and Parameters:

3.1.1 Fiber construction shall be single-mode -The core/cladding size shall be nominal 9/125µm.

3.1.2 Fiber shall be of a dual-window construction with transmission capabilities at 1310nm and 1550nm.

3.1.3 The numerical aperture (NA) of each fiber shall be 0.12.

3.1.4 The maximum attenuation of each fiber shall be 0.35 dB / km at 1310 nanometers (nm), and 0.25dB / km at 1550 nm. In certain underground locations Low Water Peak fiber cable has been installed to provide additional optimized use in the 1385 nm region. Maximum attenuation of the Low Water Peak fiber shall be 0.40dB / km at 1310 nm, 0.35 dB / km at 1385 nm and 0.25dB / km at 1550 nm.

3.1.5 Each fiber within a cable must be color coded with distinct and recognizable colors. Based on SVP preference, color coding and identification or numbering system will be assigned for each leased bundle of 12 strands within each applicable ring.

3.1.6 Where required, each fiber shall either be terminated with an SC-type 2.5mm bayonet connector, or spliced to an SC-type 2.5mm bayonet connector pigtail. The nominal loss of the connector termination shall not exceed 0.60 dB.

3.1.7 Where required, each fiber will be fusion spliced. The measured loss of each completed strand splice shall be less than 0.15 dB per splice.

3.2 Mechanical and Environmental Conditions for the Fiber Optic Cable:

3.2.1 The cable shall be able to withstand a short-term longitudinal load (during installation) of not less than 2700N (608 lbs.) with maximum elongation of less than 0.5%. The cable shall be able to withstand a long-term longitudinal load of not less than 890N (200 lbs.).

3.2.2 The minimum static or no load (0-130 lbs.) bending radius for the cable shall be no less than ten (10) times the cable diameter. The minimum dynamic or loaded (131-600 lbs.) bending radius shall be no less than twenty (20) times the cable diameter. The cable shall be able to withstand being flexed at the minimum static bending radius +/- 90 degrees for at least 20 cycles at 20-40 cycles per minute at 20 degrees C.

3.2.2 The cable shall be able to withstand twisting of +/-360 degrees over a length of 2 meters for at least 10 cycles at 10 cycles per minute.

3.2.3 The cable shall exhibit stable performance characteristics in storage or service over a temperature range of -40 degrees C to +70 degrees C.

3.2.4 The cable shall withstand a compressive force of 435N/cm (250 lbs./in), and exhibit no increase in attenuation after the force is removed.

3.2.5 The cables shall be suitable for underground installation in an enclosed ductbank or an overhead self supporting or strand-supported installation. Cable shall be flooded with a suitable water-repellent compound, or otherwise constructed in such a manner to inhibit deterioration of performance due to duct flooding.

3.3 Fiber Optic Cable Structure:

3.3.1 A minimum of twenty-four fibers shall be in each cable, as designated on the plans. The cable structure shall be such that the fibers are grouped for easy handling. The individual fibers or buffer tubes shall be color-coded for ease of identification.

3.3.2 The cable shall contain appropriate dielectric strength members to satisfy the above mechanical and environmental specifications.

3.3.3 The cable core shall consist of fibers enclosed in filled loose buffer tubes, arranged around a central dielectric strength member. The interstices between the buffer tubes shall be filled with a suitable water-repellent compound to inhibit intrusion and migration of moisture along the cable.

3.3.4 The cable shall be enclosed in a jacket acceptable for use in an underground duct or aerial self supporting application environment.

3.4 Each span of fiber optic cable is to be installed as a single run of cable, using appropriate pulling techniques as necessary. No splices are to be made in any fiber optic cable, except as noted on the prints and at the termination of the cable in each communications room or pedestal.

3.5 Packaging and Shipping: Each length of cable shall have both ends effectively sealed. Individual fibers in each cable to be delivered must be tested before shipping to verify their conformance with the performance specifications.

3.6 Acceptable Manufacturers:
Equivalent to Alcatel Color Lock, Single Mode, Optical Fiber

[Overhead fiber is EZSpan ADSS; Underground fiber is EZ Prep Loose Tube Cable]

4.0 INSTALLATION AND OPERATION

4.1 Lessor shall coordinate all scheduled or emergency maintenance operations with Lessee's representative to insure that any interference or interruptions of Lessee's operations are anticipated and scheduled. Likewise, Lessee shall coordinate all scheduled or emergency maintenance operations with Lessor's representative to insure that any interference or interruption of Lessor's operations are anticipated and scheduled.

4.2 Lessor shall provide construction drawings applicable to Lessee's network construction, indicating all actual construction distances, variations from design, and other pertinent information upon delivery of the fiber.

5.0 ACCEPTANCE TESTING

5.1 Acceptance Procedure

Lessee's acceptance of the licensed fiber optic cable shall be based on conformance of the Dark Fiber Route (DFR) operation to the testing criteria as described herein. Prior to conduct of Lessee's Acceptance Tests, the Lessor shall test the transmission media for the acceptance of each individual strand and verify the integrity of the complete DFR ("Post-Construction Test" or "Verification Test", collectively "Lessor's Testing"). Upon completion of Lessor's Testing, Lessor shall notify Lessee in writing of the "completion of construction" and provide a Notice of Completion/Acceptance or Rejection form (Exhibit 6) for

execution by the Lessee, pursuant to the Acceptance Testing set forth in the Agreement to which this is an Exhibit.

5.2 Documentation

The Lessor shall make relevant drawings and documentation available to Lessee concurrent with the Notice of Completion.

5.3 Testing Support

Lessor will accommodate Lessor's request to participate in joint testing arrangements. Alternatively, Lessor may observe the conduct of Lessee's Acceptance Tests.

5.4 Testing and Measurement Equipment

The Lessor shall provide necessary testing equipment for performing the required Acceptance Tests, subject to review and concurrence by the Lessee. The authenticity and expiration date of the correct calibration data shall be verified by the Lessee. Lessor currently uses GNNettest for splicing and length.

5.5 Reports

Each party shall provide full test reports to the other party within two weeks of test completion, reflecting independent analysis and observations. For Lessor, any test must be provided to Lessee concurrently with a Notice of Completion (Exhibit 6). Test reports shall include a description of cable problems and testing failures, and necessary remedial actions.

5.6 Fiber Optic Cable Testing Procedures

5.6.1 Insertion Loss Testing:

5.6.1.1 An end-to-end attenuation test (including all connectors, fibers, and jumpers) shall be performed on all fiber strands by comparing the optical power at the input of a fiber with the output. This shall be accomplished by Insertion Loss Testing using a "one jumper reference" to include the connector losses. Testing shall be in accordance with EIA-455-53.

5.6.1.2 Tests shall be performed by using a transmitter and inserting a light signal, at 1310 and 1550 nanometers for single-mode fiber, in a "known" short (about 2 meters and less than 3 meters) jumper and placing a receiver or power meter at the other end of the jumper and measuring the reference level in dBm and recording this as the "reference jumper".

5.6.1.2.1 Disconnect the receiver from the jumper and connect another jumper to the receiver and the reference jumper.

5.6.1.2.2 Measure the attenuation in dB and insure loss is less than 1 dB and record this loss as the test set loss.

5.6.1.2.3 Now disconnect the two jumpers from each other and connect to each end of the fiber to be tested.

5.6.1.2.4 Testing shall be performed at 1310 and 1550 nanometers for single-mode fiber, using an attenuation or optical loss test set equivalent to GNNettest GN-6025/6250. The lossshall be calculated by subtracting the system loss from the reference loss (see below).

$Loss = P_{ref} - P_{sys}$

Where,

P_{ref} = the level of the jumpers measured in dBm

P_{sys} = the level of the jumpers plus the fiber being tested in dBm.

5.6.2 This tested actual loss value shall be compared to the theoretical loss calculated using the following attenuation criteria:

5.6.2.1 SC Type connectors (per mated pair):
Single-mode - 0.6 dB.

5.6.2.2 Fiber cable:
Single-mode - 0.35/.40 (lwp) dB/km @ 1310nm
0.25 dB/km @ 1550nm

5.6.2.3 It shall be the responsibility of the Lessee to independently calculate the theoretical loss using installed cable lengths.

5.6.3 If the actual loss exceeds the theoretical loss by greater than 1.0dB, the fiber shall be considered as having not passed the acceptance criteria. Lessor shall perform one of the following activities based on the requirements of the system and project schedules:

5.6.3.1 Re-test using optical time-domain reflectometer (OTDR) testing as described below.

5.6.3.2 Properly isolate the fiber from use in the system.

5.6.3.3 Cause replacement of the defective fiber optic cable.

5.6.4 All cables will have been previously tested with an OTDR upon installation and acceptance by the Licenser. These records will be made available to and may suffice as record of proof of performance for Lessee.

5.6.5 All cables that fail the continuity or the insertion loss tests shall be re-tested using an optical time-domain reflectometer. OTDR testing may also be performed by the Lessee, the Lessor, or both as the utilization of the cable is transferred from the Lessor to the Lessee.

5.6.6 These tests shall be used to disclose irregularities, if any, and their location caused from manufacture, handling, or installation such as discontinuities and micro-bendings.

BarnesandNoble.com, LLC

EXHIBIT 8
ENGINEERING INFORMATION FORM
FOR CONSTRUCTION PERFORMED BY LESSEE
(Confidential)

Lessee's Fiber Route Description • Architecture • Route Layout • Terminating Points • Mileage • Fiber Count	
Lessee's Schedules • Anticipated Service Date • Anticipated Tests	
Lessee's Construction Plans • Attached Drawing • Attachment Points • Manhole Locations • Terminal Equipment	
Lessee's Coordination With City • Joint Testing • Network Interfaces • Construction Support	
Lessee's Project Manager • Name • Telephone • Fax • Address	

BarnesandNoble.com, LLC
EXHIBIT 9

PERSONNEL CONTACT FORM

For City:

Primary Cont act during normal business hours:

SVP Fiber Program Manager
1500 Warburton Avenue, Santa Clara CA 95050
Telephone (408) 261-5486
Facsimile (408) 249-0217

Secondary contact or for emergencies (24x7x365) and after normal business hours:

SVP Operator on Duty
Operations Control Room
Telephone: (408) 615-5640
Facsimile: (408) 727-9833

For Lessee:

Primary Contact:

Name: Robert Ferguson
Title: Senior IT Architect
Address: 3400 Hillview. Palo Alto, CA 94304
Telephone 650-798-1200
Email: rferguson@book.com
Facsimile:

Secondary Contact:

Name: Deepak Mulchandani
Title: VP Device Platform Engineering
Address: 3400 Hillview. Palo Alto, CA 94304
Telephone 650-798-8754
Email: dmulchandani@book.com
Facsimile:

BarnesandNoble.com, LLC
EXHIBIT 10
WORK ORDER REQUEST FORM
(CONFIDENTIAL)
[FOR WORK TO BE PERFORMED BY CITY]

This Request Form is submitted on behalf of **BarnesandNoble.com,LLC**, the lessee (the "Lessee") under that certain Lease Agreement by and between the City of Santa Clara, California (the "City") and Lessee dated as of _____, 2014 (the "Agreement"). Lessee hereby requests that the City provide Additional Attachment Points, Fibers, Service Drops, or Backbone Extensions, as indicated below. The person signing on behalf of Lessee has authority to bind Lessee. Provided that this Request Form is signed on behalf of the City and returned to Lessee on or before _____, then this document shall amend the Agreement as herein provided without the necessity of any further action by either party. If this document is not signed on behalf of the City and returned to Lessee by the date referenced in the preceding sentence, then this Request Form shall be null and void unless an extension is granted in writing by Lessee.

Attachment Points
Lessee requests that the City provide Lessee with Attachment Points at the following locations:

Intersection Description	Box Number	No. of Fibers To attach	Est. Cost	Est. Completion
1.				
2.				
3.				

Add an additional page if necessary.

Additional Fiber
Lessee hereby requests that it be permitted to lease Additional Leaseable Fiber at the following locations:

No. of Fibers	General Intersection Location	Node to Node	Price Per Exhibit 5	Est. Completion
1.				
2.				
3.				

Add an additional page if necessary.

Service Drops
Lessee requests that the City construct a Service Drop for Lessee at the following locations:

Intersection Description	Box Number	No. of Fibers	Est. Cost	Est. Completion
1.				
2.				
3.				

Backbone Extensions
Lessee requests that City consider extending its backbone and lease portions of that extension to Lessee, in the following locations:

Describe the general path by Street name and intersections. State the number of fibers Lessee will lease.

Lateral Extensions
Lessee requests that the City construct a Lateral Extension at the following locations:

Street Address	Tenant Name	No. of Fibers	Est. Cost	Est. Completion
1.				
2.				
3.				
4.				

Add an additional page if necessary.

Building Entrance
Lessee requests that the City obtain Building Entrance at the following locations:

Street Address	Tenant Name	No. of Fibers to Enter	Est. Cost (Add 15 %)	Est. Completion
1.				
2.				
3.				
4.				

Add an additional page if necessary.

////

////

////

////

////

////

////

////

////

////

////

////

////

By their signatures below, Lessee and the City agree that the Agreement is amended as per the terms set forth above, effective as of the date this Request Form is signed by the City (subject to the time limitation set forth above). City will use its commercially reasonable efforts to meet the estimated completion dates above, however, Lessee understands and agrees that the estimated completion dates are estimated dates, and not guaranteed by City

BarnesandNoble.com. LLC
A Delaware limited liability corporation

_____

By:
Title:

Address:

Telephone: (___)___-_____
Fax: (___)___-_____

Dated: _____

"Lessee"

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

_____

By: John Roukema
Director, Electric Utility

1500 Warburton Avenue
Santa Clara, California 95050
Telephone: (408) 261-5292
Fax: (408) 249-0217

Dated: _____

"City"

IF COUNCIL APPROVAL IS NECESSARY, THE FOLLOWING SIGNATURES MUST BE OBTAINED IN ORDER FOR THIS TO BE A VALID AND BINDING AMENDMENT TO THE AGREEMENT:

Approved as to form:

_____
RICHARD E. NOSKY, JR
City Attorney

By: _____
JULIO J. FUENTEST
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

Attest:

_____
ROD DIRIDON, JR.
City Clerk

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MB.5

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Water and Sewer Utilities

Subject: Approval of Amendment No. 2 to the Agreement for Design Professional Services with Schaaf and Wheeler, Consulting Civil Engineers and Service Order No. 6 to Provide Specialized Engineering Services

EXECUTIVE SUMMARY:

On June 12, 2012, the City entered into an Agreement for Design Professional Services with Schaaf and Wheeler, Consulting Civil Engineers (Consultant) for $150,000 to provide specialized engineering services on a Service Order basis. The consultant procurement process was conducted per City Manager's Directive 66 Consultant Services, under Tier 3 Consultant Services – Greater than $50,000. Staff completed a review of the submitted RFQ's and short listed the firms through formal ranking process and conducted oral presentations. Two firms, one of which was Schaaf and Wheeler, were selected to perform work for the City. After which negotiations proceeded and the on-call agreement was generated and approved by City Council on June 12, 2012.

Amendment No. 1 to the original Agreement extended the agreement termination time to December 31, 2014 with no additional cost. The Consultant has provided industry specific engineering services under budget and within schedule for the Abandonment of Wells No. 1-02, 19 & 33 (WA 30147) and the Demolition of Walsh Elevated Water Storage Tank (WA 30168).

The Water and Sewer Utilities is requesting to retain the Consultant to perform additional work including:

- Service Order No. 6 to provide engineering services for a Well Assessment Study on the City's existing groundwater wells. The scope of the study will include the assessment of the wells existing condition and recommendations for upgrades related to but not limited to health and safety, operations, water production, reliability and monitoring.

- This proposed well assessment will evaluate the current condition of the wells and recommend rehabilitation schedules to manage our groundwater.

The well assessment study would be the last project under the existing on-call agreement with the Consultant. The City will conduct a new consultant procurement later this year.

A copy of Amendment No. 2 to the Agreement for Performance of Service with Schaaf and Wheeler, Consulting Civil Engineers is available for review in Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The advantage of having a Design Professional Services agreement with Schaaf and Wheeler, Consulting Civil Engineers allows the Water & Sewer Utilities to execute this project in an expeditious manner. Approval of this Amendment No. 2 will allow the Well Assessment Project mentioned above to move forward. The well assessment project will provide critical information for planning future Capital Improvement Program budget.

ECONOMIC/FISCAL IMPACT:

The cost of the original Agreement is $150,000. This Amendment No. 2 increases the not to exceed amount by $130,000, for a total contract cost not to exceed of $280,000. Sufficient funds are available in the Water Distribution System Replacement/Restoration Project 592-1423-80100-7054.

RECOMMENDATION:

That the Council approve and authorize the City Manager to execute Amendment No. 2 to the Agreement for Design Professional Services with Schaaf and Wheeler, Consulting Civil Engineers and Service Order No. 6 to provide various specialized engineering services in an amount not to exceed $130,000, for a total not to exceed of $280,000.

Christopher L. de Groot
Director of Water & Sewer Utilities

Certified as to Availability of Funds: AK
592-1423-80100-7054 $130,000.00

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

for Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) ***Amendment No. 2 to the Agreement with Schaaf and Wheeler, Consulting Civil Engineers***
2) ***Service Order No. 6 by Schaaf and Wheeler, Consulting Civil Engineers***

AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS

PREAMBLE

This agreement ("Amendment No. 2") is made and entered into on this ____ day of _____, 2014, ("Effective Date") by and between Schaaf & Wheeler, Consulting Civil Engineers, a California Corporation, with its principal place of business located at 1171 Homestead Road, Suite 255, Santa Clara, CA 95050 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Consultant may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 2."

RECITALS

A. The Parties previously entered into an agreement entitled "Agreement for Design Professional Services By and Between the City of Santa Clara, California and Schaaf & Wheeler, Consulting Civil Engineers," dated June 12, 2012 (the "Original Agreement"); and

B. The Original Agreement was previously amended by Amendment No. 1, dated November 12, 2013; and is again amended by this Amendment No. 2. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and

C. The Parties entered into the Original Agreement for the purpose of having Consultant provide specialized engineering and technical services on various water utility capital improvement projects, and the Parties now wish to amend the Original Agreement to provide additional funding for additional engineering services.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That EXHIBIT B of the Original Agreement is hereby amended by deleting the existing EXHIBIT B in its entirety and replacing it with the following REVISED EXHIBIT B of this Amendment No.2.

2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 2 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 2, the provisions of this Amendment No.2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 2 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS
a California corporation

By: _____
(Signature of Person executing the Agreement on behalf of Consultant)
Name: Mr. Peder Jorgensen
Title: Executive Vice President
Local Address: 1171 Homestead Road, Suite 255
Santa Clara, CA 95050
Telephone (408) 246-4848
Fax: (408) 246-5624

"CONSULTANT"

I:\Water\AGREEMTS\Schaaf & Wheeler\On Call Consultant Contract 2012\Amendment No. 2\Schaaf Amendment No. 2.doc

AMENDMENT NO. 2
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS

REVISED EXHIBIT B

SCHEDULE OF FEES

In no event shall the amount billed to City by Consultant for services under this Agreement exceed two hundred and eighty thousand dollars ($280,000), subject to budget appropriations.

The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Service Order shall not exceed the maximum dollar amount specified in the Service Order. Consultant shall complete all Services contained within the scope of a Service Order regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Consultant shall not perform any Services outside the scope of the Service Order without prior written authorization when the amount billed for under a Service Order exceeds the maximum dollar authorized amounts in the Service Order.

When Consultant is working on an On-Call Service Order, billing by Consultant shall be on a monthly basis based upon actual time expended at the fixed hourly rates shown below in the Project Rate Schedule. Billing shall be by Service Order and provide the personnel name, position, hours worked, and hourly rate. The hourly rate shall be an all-inclusive fee and include all costs, including travel, per diem, and out of pocket expenses. Provided the invoice is complete and services covered by the invoice have been completed in accordance with provisions of this Agreement as determined by the City, the City will pay Consultant up to the amount shown on the invoice.

SERVICE ORDER NO. 6
FOR DESIGN PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS

The Parties to this Service Order No. 6 ("Service Order") agree that on this _____ day of _____, 2014, this Service Order is made pursuant to the terms of an Agreement between the Parties entitled, "Agreement for Design Professional Services by and Between the City of Santa Clara, California and Schaaf & Wheeler Consulting Civil Engineers," dated June 12, 2012, amended by Amendment No. 1, dated November 13, 2012, and amended by Amendment No. 2, dated _____, 2014, the terms of which are incorporated by this reference.

This Service Order describes the Services to be provided to the City of Santa Clara, California ("City") by Schaaf & Wheeler Consulting Civil Engineers ("Consultant"), which are more fully described in Consultant's proposal to City entitled "City of Santa Clara On-Call Civil Engineering Services Consulting Agreement – Service Order No. 6 – Well Assessment Project" ("Proposal"), attached to this Service Order as Exhibit A and incorporated by this reference. The Services to be performed under this Service Order shall be completed within the time period beginning on _____, 2014, and ending on December 31, 2014. The attached Proposal contains a complete description of the Services to be performed by the Consultant under this Service Order. In no event shall the amount paid to the Consultant for the Services provided to City by the Consultant under this Service Order, including all fees or pre-approved costs and/or expenses, exceed one hundred and thirty thousand dollars ($130,000), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Service Order as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

Approved as to Form:

RICHARD E. NOSKY, JR.
City Attorney

By:
JULIO J. FUENTES
City Manager

Attest:

ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS
a California corporation

By:
Peder C. Jorgensen
Title: Executive Vice President
Address: 1171 Homestead Road, Suite 255
Santa Clara, CA 95050
Telephone: (408) 246-4848
Facsimile: (408) 246-5624

EXHIBIT A

City of Santa Clara
On Call Engineering Services
Scope of Services
Service Order No. 6
Well Assessment Project

See the following pages:

- Schaaf & Wheeler Scope of Services (pages 1-3)
- City of Santa Clara Potable Water Well Assessment Fee Schedule

City of Santa Clara

Existing Potable Water Well Assessment

Scope of Services

Project Understanding

City of Santa Clara Water and Sewer Utilities staff wishes to obtain an overall assessment and prioritization of capital improvements for the City's potable water wells. Improvements may include replacement of outdated or worn equipment, health and safety upgrades, station reliability upgrades, or upgrades to help the City monitor the operation of the stations.

The City owns and operates 27 potable water wells listed in Table 1 for which the City is looking for condition assessment.

Table 1

City of Santa Clara Wells

	Facility Name
1	WELL 02-02
2	WELL 3-02
3	WELL 04
4	WELL 05-02
5	WELL 6
6	WELL 07
7	WELL 08
8	WELL 09-02
9	WELL 10
10	WELL 11
11	WELL 12
12	WELL 13-02
13	WELL 14
14	WELL 15
15	WELL 17-02
16	WELL 18-02
17	WELL 21
18	WELL 22-02
19	WELL 23
20	WELL 24
21	WELL 25
22	WELL 26
23	WELL 28
24	WELL 29 (FOR EMERGENCY USE ONLY)
25	WELL 30
26	WELL 32-PENDING(CAN BE USED FOR EMERGENCY WITH DPH APPROVAL)
27	WELL 34

Scope Outline

1. Well Paper Study

a. Obtain SCVWD well logs and City files

b. Compile data for each well

c. Identify issues and potential problems of each well

d. Identify likely life of each well

e. Recommended near term additional evaluation

2. Well Site Inspections

a. Review well head, discharge piping, venting and sampling for conformance to current CDPH standards

b. Review previous state inspection reports

c. Review potential for emergency disinfection connections

3. Well Capacity Verification

a. Obtain existing well pump factory performance curves

b. Compare well pump test reports (by others) with factory curves

4. Electrical and SCADA Assessment

a. Electrical service capacity and conditions of service equipment

b. Conditions of existing standby generator. Evaluate capacity to support well pump equipment

c. Electrical systems at each site for NEC and NFPA compliance

d. Conditions of well pump control panel and instrumentation

e. Telemetry and SCADA compliance with current City Standard

5. Site Security Assessment

a. Examine existing facility security

b. Interview staff to assess past security issues or vandalism

c. Recommend improvements to security at each well

6. Structural and Seismic Assessment

a. Conduct visual survey at each well site of buildings and equipment for adequacy of structure and equipment anchorage

7. Additional Assessments

a. Identify Operation and Maintenance departments needs or concerns

b. Site and well head accessibility

8. Establish Improvements

a. Develop recommended improvements for each well site

b. Prioritize improvements based on condition, safety code compliance, age, efficiency and maintenance history

c. Develop a Capital Improvement Program (CIP), both immediate and long term

9. Cost Estimates

a. Prepare planning level cost estimates for the recommended improvements.

10. Report

a. Compiling existing information and inspection reports into a written report documenting the services performed and assessment findings

b. The report will contain two sections:

i. Summary report containing the assessment and calculation procedures, tables of station improvements, estimated construction costs, and a recommended schedule for completing the improvements

ii. Individual pump station reports summarizing major equipment, pump capacity, recommended improvements, and estimate of probable construction costs

c. Prepare preliminary draft report for review by City staff.

d. Meet with City staff to review the document and discuss the improvements

e. Make revisions and submit final report

City of Santa Clara, Potable Water Well Assessment

Schaaf & Wheeler

Date: April 23, 2014

Schedule of Hours and Rates by Task

TASK	TASK	Schaaf & Wheeler: Project Manager	Schaaf & Wheeler: Senior Engineer	Schaaf & Wheeler: Associate Engineer	Schaaf & Wheeler: Assistant Engineer	Schaaf & Wheeler: Junior Engineer	Schaaf & Wheeler Subtotal	Subconsultants: Geoconsultants, Inc	Subconsultants: MTH Engineers, Inc	Subtask Cost
TASK	Hourly Rate	$210	$185	$165	$145	$135				
1	**Well Paper Study**	4	0	0	0	0	$ 420	$ 10,800	$ -	$ 12,300
	Obtain SCVWD well logs & City files	1					$210			
	Compile Well Data (27 @ 1.5hrs)	1					$210			
	Identify Issues & Potential Problems of Each Well						$0			
	Identify Expected Life of each Well						$0			
	Recommend near term additional Evaluation	2					$420	$ 10,800		
2	**Well Site Inspection**	20	0	36	27	0	$ 14,055	$ 5,200	$ -	$ 19,775
	Review Each Well	12		36			$8,460	$ 5,200		
	Review Previous State Inspection Reports (27 @ 1hr)	8			27		$5,595			
3	**Well Capacity Verification**	0	0	4	27	0	$ 4,575	$ -	$ -	$ 4,575
	Obtain Existing Well Pump Factory Performance Curves			4			$660			
	Compare Well Test Reports w/ Factory Curves(27 @ 1hr)				27		$3,915			
4	**Electrical and SCADA Assessment**	4	0	0	0	0	$ 840	$ -	$ 5,760	$ 7,176
	Power and Electrical System for NEC and NFPA Compliance	4					$840		$ 5,760	
	Telemetry and SCADA Compliance w/ Current City Standard						$0			
5	**Site Security Assessment**	0	0	8	0	0	$ 1,320	$ -	$ -	$ 1,320
	Examine Existing Facility Security(part of Task 2)						$0			
	Assess Past Security Issues or Vandalism			4			$660			
	Recommend Improvements to Security			4			$660			
6	**Structural Seismic Assessment**	2	0	4	0	0	$ 1,080	$ -	$ -	$ 1,080
	Visual Seismic Survey of Buildings & Panels	2		4			$1,080			
7	**Additional Assessment**	1	0	4	0	0	$ 870	$ -	$ -	$ 870
	Identify O& M Departments Needs or Concerns	1		2			$540			
	Site & Well Head Accessibility			2			$330			
8	**Establish Improvements**	12	0	34	60	0	$ 16,830	$ -	$ -	$ 16,830
	Develop Improvements for Each Well Site	8		20	40		$10,780			
	Prioritize Improvements			6			$990			
	Develop Capital Improvement Program	4		8	20		$5,060			
9	**Cost Estimate**	4	0	16	24	0	$ 6,960	$ -	$ -	$ 6,960
	Prepare Planning Level Cost Estimate	4		16	24		$6,960			
10	**Report**	22	0	52	120	0	$ 30,600	$ 6,600	$ 7,856	$ 46,502
	Compile Existing Information and Inspection Reports	4			32		$5,480			
	Summary Report	2		8	16		$4,060			
	Individual Well Summary	4		16	40		$9,280			
	Preliminary Draft	4		16	20		$6,380	$ 6,600	$ 7,856	
	Meet w/ City staff to Review Report	4		4			$1,500			
	Finalize Report	4		8	12		$3,900			
Sub Total							$77,550	$ 22,600	$ 13,616	$ 117,388
	Additional Services as Neeeded -10% of Sub Total									$ 11,738
Total										$ 129,126

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 7B-6

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Water and Sewer Utilities

Subject: Approval of Amendment No. 4 to the Agreement for Services with GHD and Service Order No. 9 to Provide Specialized Engineering Services

EXECUTIVE SUMMARY:

On June 12, 2012, the City entered into an On-Call Agreement for Performance of Services with GHD Inc. (Consultant) for $150,000 to provide specialized engineering services on a Service Order basis. In 2012, staff completed a request for qualifications. Two firms submitted a proposal. Staff selected GHD Inc. to perform the work.

Under this On-Call Agreement, GHD Inc. is performing work on Northside Tank Site Improvements and Central Park Pond Improvements. The Northside Tank Site Project includes retrofitting piping and upgrading emergency power for two aboveground reservoirs. The Central Park Pond project will include installing biological treatment and constructing a wetland with recycled water.

The Water and Sewer Utilities is requesting to retain GHD Inc. to perform additional work described below:

- Provide engineering services for the Corporation Yard Water Storage Tank and Pump Station Project. This new infrastructure would replace the Walsh Elevated Water Storage Tank, which was demolished in August 2013, with an at-grade two (2) million gallon welded steel water storage tank and booster pump station. This new tank would provide reliability to the City's existing potable water distribution system and will serve as an emergency source of water to both the public and the City's Emergency Operations Center.

The total cost of the additional work to be performed on the Corporation Yard Water Storage Tank and Pump Station Project is $390,000. The project will be the last project under the existing on-call agreement with the GHD Inc. The City will conduct a new consultant procurement later this year.

A copy of Amendment No. 4 to the Agreement for Performance of Service with GHD Inc. is available for review in Council Offices.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The advantage of having an on-call service agreement with GHD Inc. allows the Water & Sewer Utilities to execute this project in an expeditious manner. Staff recommends GHD Inc. to perform

additional work on the design of the Corporation Yard Water Storage Tank and Pump Station Project due to their tank and pump design experience. The project will also provide water supply for emergency use, therefore GHD Inc. will work to complete this project in an accelerated timeline.

ECONOMIC/FISCAL IMPACT:

Sufficient funds are available in the Water Distribution System Replacement/Restoration Fund 592-1423-80100-7054. The total cost of the original Agreement and the three additional amendments under the City's call order with GHD Inc. is $511,000. Amendment No. 4 increases the not-to-exceed amount by $390,000, for a total contract cost not to exceed $901,000.

RECOMMENDATION:

That the Council approve and authorize the City Manager to execute Amendment No. 4 to the Agreement for Services with GHD, Inc. and Service Order No. 9 to provide various specialized engineering services in an amount not to exceed $390,000, for a total contract cost not to exceed $901,000.

Christopher L. de Groot
Director of Water & Sewer Utilities

Certified as to Availability of Funds:
592-1423-80100-7054 $390,000.00

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

for Julio J. Fuentes
City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) ***Amendment No. 4 to the Agreement with GHD Inc.***
2) ***Service Order No. 9 by GHD Inc.***

I:\Water\MEMOS\AGENDA\2014\GHD Amend No. 4 SO9\Agenda Report Amendment No 4 FINAL.docx

AMENDMENT NO. 4
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GHD INC.

PREAMBLE

This agreement ("Amendment No. 4") is made and entered into on this ____ day of _____, 2014, ("Effective Date") by and between GHD, Inc., a California Corporation, with its principal place of business located at 16541 Scientific Way, Irvine, CA 92618 ("Consultant"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 4."

RECITALS

A. The Parties previously entered into an agreement entitled "Agreement for Design Professional Services By and Between the City of Santa Clara, California and GHD, Inc.", dated June 12, 2012 (the "Original Agreement"); and

B. The Original Agreement was previously amended by Amendment No. 1, dated November 13, 2012; Amendment No. 2, dated November 12, 2013; Amendment No. 3, dated April 8, 2014; and is again amended by this Amendment No. 4. The Original Agreement and all previous amendments are collectively referred to herein as the "Original Agreement as Amended"; and

C. The Parties entered into the Original Agreement for the purpose of having Contractor provide specialized engineering and technical services on various water utility capital improvement projects, and the Parties now wish to amend the Original Agreement to provide additional funding for additional engineering services.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That EXHIBIT B of the Original Agreement, is hereby amended by deleting the existing EXHIBIT B in its entirety and replacing it with the following REVISED EXHIBIT B of this Amendment No.4.

2. TERMS

That Section 2 of the Original Agreement is hereby amended to read:

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on December 31, 2014. However, this Agreement shall be deemed extended for such time as is necessary for Consultant to complete work on any On-Call Service Order which is issued prior to the termination date of this Agreement, but is still in progress on the termination date of this Agreement. Any incomplete On-Call Serve Order(s) which have been issued pursuant to the terms of a previous agreement between the Parties is/are hereby reaffirmed and each such On-Call Service Order shall remain in full force and effect under this Agreement, subject to the terms of such On-Call Service Order."

The Parties acknowledge and accept the terms and conditions of this Amendment No. 4 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 4 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

GHD INC.
a California corporation

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)
Name: Dave Lindow
Title: Business Group Manager
Local Address: 16451 Scientific Way
Irvine, CA 92618
Telephone (415) 283-4970
Fax: (415) 283-4980

"CONSULTANT"

I:\Water\AGREEMTS\GHD\Amdmt 4 and Service Order 9 - New Walsh Tank and Pump Station\GHD Amendment No. 4.docx

AMENDMENT NO. 4
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND
GHD INC.

REVISED EXHIBIT B

SCHEDULE OF FEES

In no event shall the amount billed to City by Consultant for services under this Agreement exceed nine hundred one thousand dollars ($901,000), subject to budget appropriations.

The total amount billed to, and paid by, City for Services provided and authorized expenses incurred under a Service Order shall not exceed the maximum dollar amount specified in the Service Order. Consultant shall complete all Services contained within the scope of a Service Order regardless of whether the not to exceed amount has been reached, at no extra charge to the City. However, Consultant shall not perform any Services outside the scope of the Service Order without prior written authorization when the amount billed for under a Service Order exceeds the maximum dollar authorized amounts in the Service Order.

When Consultant is working on an On-Call Service Order, billing by Consultant shall be on a monthly basis based upon actual time expended at the fixed hourly rates shown below in the Project Rate Schedule. Billing shall be by Service Order and provide the personnel name, position, hours worked, and hourly rate. The hourly rate shall be an all-inclusive fee and include all costs, including travel, per diem, and out of pocket expenses. Provided the invoice is complete and services covered by the invoice have been completed in accordance with provisions of this Agreement as determined by the City, the City will pay Consultant up to the amount shown on the invoice.

Project Rate Schedule

FEE SCHEDULE

Hourly Rates

Principal	$ 216-276
Senior Project Manager	136-266
Project Manager	106-176
Senior Project Engineer	136-266
Project Engineer	106-176
* Staff Engineer	66-151
Senior Project Scientist	146-201
* Project Scientist	101-141
* Staff Scientist	86-111
Senior Planner	126-196
* Staff Planner	86-126
3-Person Survey Crew	261-406
2-Person Survey Crew	176-296
1 Person Survey Crew	91-151
Professional Land Surveyor	140-175
Staff Surveyor/LSIT	100-140
* Technician	76-151
* Designer	91-156
* CADD	86-111
* Project Administrator	81-141
* Word Processor & Clerical Support	51-116

Employee time will be billed in accordance with the fees listed above. These rates are subject to change after 18 months. For employee staff marked with an asterisk, time spent over 8 hours per day, time spent on swing shifts, and time spent on Saturdays will be charged at 1.5 times the hourly billing rate while time worked on Sundays will be charged at 2.0 times the hourly billing rate and holiday work will be charged at 2.5 times the hourly billing rate, subject to approval by City before working overtime. All field personnel charges are portal to portal. Professional employees will not be charged out at premium charge rates for overtime work. Expenses and other similar project related costs are billed out at cost subject to prior approval by City . Subconsultant costs are billed at cost plus 10%.

SERVICE ORDER NO. 9
FOR DESIGN PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY GHD INC.

The Parties to this Service Order No. 9 ("Service Order") agree that on this _____ day of _____, 2014, this Service Order is made pursuant to the terms of an Agreement between the Parties entitled, "Agreement for Design Professional Services by and Between the City of Santa Clara, California and GHD Inc.," dated June 12, 2012, amended by Amendment No. 1, dated November 13, 2012, amended by Amendment No. 2, dated November 12, 2013, amended by Amendment No. 3, dated April 8, 2014, and amended by Amendment No. 4, dated _____, 2014, the terms of which are incorporated by this reference.

This Service Order describes the Services to be provided to the City of Santa Clara, California ("City") by GHD Inc. ("Consultant"), which are more fully described in Consultant's proposal to City entitled "City of Santa Clara On-Call Civil Engineering Services Consulting Agreement – Service Order No. 9 New Walsh Water Storage Tank and Pump Station" ("Proposal"), attached to this Service Order as Exhibit A and incorporated by this reference. The Services to be performed under this Service Order shall be completed within the time period beginning on _____, 2014, and ending on June 30, 2015. The attached Proposal contains a complete description of the Services to be performed by the Consultant under this Service Order. In no event shall the amount paid to the Consultant for the Services provided to City by the Consultant under this Service Order, including all fees or pre-approved costs and/or expenses, exceed four hundred fifty thousand dollars ($450,000), subject to budgetary appropriations.

The Parties acknowledge and accept the terms and conditions of this Service Order as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

Approved as to Form:

RICHARD E. NOSKY, JR.
City Attorney

Attest:

ROD DIRIDON, JR.
City Clerk

By: _____
JULIO J. FUENTES
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

GHD INC.
a California corporation

By: _____
Dave Lindow
Title: Business Group Manager
Address: 16451 Scientific Way
Irvine, CA 92618
Telephone: (415) 283-4970
Facsimile: (415) 283-4980

SERVICE ORDER NO. 9
FOR DESIGN PROFESSIONAL SERVICES
TO BE PROVIDED TO THE
CITY OF SANTA CLARA, CALIFORNIA
BY GHD INC.

EXHIBIT A

New Walsh Water Storage Tank and Pump Station

We are pleased to submit this proposal for Service Order No. 9, to provide engineering services for the Walsh Water Storage Tank and Pump Station project.

Background/Proposed Project

The City of Santa Clara (City) recently demolished an existing elevated water storage tank located at the City Corporation Yard on Walsh Avenue. The City proposes to replace the tank with a new, ground-level welded steel water storage tank and booster pump station.

Based on discussions with, and information provided by, City staff, the proposed project will include the following major components:

- A 1.5 to 2.0 million gallon welded steel tank, at grade.
- A booster pump station to deliver water from the tank to the distribution system. The pump station building is assumed to be concrete block, but other alternatives will be evaluated during preliminary design.
- An emergency generator, located outside, adjacent to the new pump station building.
- Inlet/outlet piping to connect the new tank to the existing distribution system in Walsh Avenue. The existing pipeline to the old tank will be utilized if possible.
- A new water supply pipeline from the new tank to an underground bunker located at the Fire Station at the corner of Walsh Avenue and Scott Boulevard. The water supply pipeline will be routed through the Corporation Yard property.

The sizing of the tank and pump station capacities will be determined by hydraulic modelling conducted by the City.

The proposed scope of work will include:

- Phase A: Project Management
- Phase 1: Preliminary Design
- Phase 2: Final Design
- Phase 3: Bidding and Award
- Phase 4: Construction
- Phase 5: Post-Construction
-

The scope of work will result in development of construction documents for public bidding of the project in accordance with the proposed schedule presented herein.

Project Team

The proposed project team consists of the following key staff:

- Project Manager — Mark Soldati
- Project Director — Adrian Clarke
- QA/QC Coordinator — Mike Kincaid
- Lead Structural — Craig Lewis
- Lead Mechanical/HVAC — Chris Hanzel
- Lead Electrical/SCADA — Shishir Doctor
- Lead Architectural — Sue Brady

Mark will oversee a team of engineers and support staff located in our San Jose, San Francisco and Santa Rosa offices. We propose to subcontract with Cross Land Surveying for surveying and mapping services, Cornerstone Geotechnical for geotechnical investigations, Exaro for potholing, and Corrpro for design of the tank cathodic protection facilities.

Scope of Work

GHD proposes to perform the following tasks:

Phase A: Project Management

Task A-1: Prepare Monthly Invoice and Progress Report
Prepare monthly invoice for submittal to the City. Prepare progress report to accompany the invoice, outlining the work performed during the billing period, the work to be completed in the next billing period, and describing the budget and schedule status. This task also includes the day-to-day project management, schedule and budget control.

Deliverable: Monthly Invoice and Progress Report

Task A-2: Conduct Kickoff Meeting and Site Observation
Conduct a kickoff meeting with City staff and other project stakeholders, including a site visit to the project site.

Deliverable: Meeting minutes

Task A-3: Conduct Meetings
GHD proposes to conduct the following formal meetings for the project:

- Preliminary Design Charrette
- Basis of Design Report (BODR) Review Meeting
- 65% Submittal Review Meeting
- 95% Submittal Review Meeting
- 100% Submittal Review Meeting
- Project progress meetings (estimated to be a total of 4 additional meetings)

In addition, GHD will maintain regular email and telephone contact with the City project manager to provide regular updates on project progress as necessary.

Deliverable: *Meeting minutes*

Phase 1: Preliminary Design

GHD proposes to perform the following subtasks during the Preliminary Design Phase.

Task 1-1: Research/Review Existing Information
Research and review existing information provided by the City or obtained by GHD. Information shall include, but not be limited to, previous studies conducted by the City or others, as-built plans for the Corporation Yard and existing tank/pipeline, existing topographic mapping and related environmental materials.

Task 1-2: Perform Utility Research
Perform utility research along the potential pipeline and access road alignments and the tank site. GHD will perform research into existing utilities parallel to and crossing the proposed alignments. All known utility owners, including the City of Santa Clara, will be contacted to obtain existing facility mapping. Identified facilities will be placed onto the plan and profile drawings. GHD will subcontract with a local utility locating company to pothole critical utilities along the pipeline alignment. For budgeting purposes, two days of potholing are assumed to be included in the scope.

Deliverables: *1) Utility contacts summary table*
2) Pothole information

Task 1-3: Identify and Coordinate Permits
Identify the necessary permits for the project. Coordinate preparation of the permits with City staff. This scope of work assumes that construction will not affect wetlands or drainages and that permits from the Corps of Engineers, Regional Board, and Fish and Wildlife will not be necessary.

Deliverable: *Permit list*

Task 1-4: Develop Design Criteria and Conduct Preliminary Design Charrette
Develop preliminary design criteria for the project. Appropriate City standard drawings and specifications will be utilized as much as possible. A preliminary design charrette will be conducted at the City's office to present key design issues, gather comments from City staff, and to solidify the design approach. The charrette will include all stakeholders, as determined in consultation with City staff.

Deliverable: *1) Design Criteria for input into BODR*
2) Charrette agenda and minutes

Task 1-5: Prepare Basis of Design Report

Prepare a Basis of Design Report (BODR) in the form of a technical memorandum summarizing the findings of Tasks 1-1 through 1-4. The BODR will include the following:

- Structural, seismic, civil, mechanical, and electrical and instrumentation design criteria
- Preliminary site grading and yard piping plans
- Preliminary inlet/outlet pipeline and access road alignments
- Preliminary geotechnical reconnaissance information
- Preliminary estimate of probable construction cost
- Project schedule
- Preliminary drawing list and specifications outline

A draft BODR will be submitted to the City for review and comment. A review meeting will be conducted with City staff to discuss City review comments. GHD will prepare meeting minutes and distribute to all meeting attendees. City review comments to the draft report will be incorporated into the final BODR.

Deliverables: *1) 3 copies of the draft BODR*
2) 5 copies of the final BODR
3) Review meeting minutes

Phase 2: Final Design

GHD will perform the following services during the final design phase of the project. Final design will be based on the project developed and summarized in the BODR in Phase 1. For budgeting purposes, the scope below and the budget is based on the proposed project described herein. The welded steel tank structure and appurtences will be designed utilizing a performance specification providing the required design criteria.

Task 2-1: Perform Topographic Mapping and Surveying

GHD will subcontract with Cross Land Surveying, Inc. to perform topographic mapping and surveying at the tank site and along the pipeline alignments. Topographic mapping will be at a scale of 1"=20' horizontal scale, with a contour interval of one foot, and will show all important surface features (trees, structures, utilities, etc.) within the project site. Electronic files of mapping will be provided in AutoCAD format for use in developing the grading plan.

Deliverable: *Electronic file of topographic mapping*

Task 2-2: Conduct Geotechnical Investigations

GHD will subcontract with Cornerstone Geotechnical to geotechnical investigations for the project, including the following subtasks:

- Review of available geotechnical information in the vicinity of the project site
- Field exploration, consisting of three (3) exploratory borings using truck-mounted hollow-stem auger drilling equipment, to a depth of 15 feet along the proposed pipeline alignments; one (1) exploratory boring to a depth of 40 feet within the tank footprint; and two (2) Cone Penetration Tests to a depth of 50 feet within the tank footprint. Underground Service Alert will be notified to mark existing utilities at the boring and CPT locations.

- Laboratory testing, including in-situ moisture/density tests, grain size distribution tests, Atterberg Limit tests, one-dimensional consolidation tests and soil corrosivity tests.
- Engineering analysis to develop site grading recommendations and geotechnical design parameters for foundations and pavement areas.

The results of the geotechnical investigations and findings and recommendations will be presented in a geotechnical report.

Deliverables: *1) 3 copies of the Draft Geotechnical Investigation Report*
2) 3 copies of the Final Geotechnical Investigation Report

Task 2-3: BAAQMD Permit Coordination
Prepare the Bay Area Air Quality Management District (BAAQMD) Permit-to-Construct application for the engine generator (EG) unit. GHD will submit the application to the City for submittal to BAAQMD.

Task 2-4: Prepare Construction Drawings
Prepare construction drawings for the project. Interim drawing submittals will be made at the 65%, 95% and 100% completion levels. City review comments to the interim submittals will be incorporated into the drawings. The Final bid set will be an original set of signed and stamped drawings on mylar, submitted to the City for mass reproduction and advertising.

As noted in Task A-3 above, review meetings will be held with City staff at the end of City review of the 65% and 95% submittals. Meeting minutes will be prepared and distributed by GHD.

It is estimated that a total of 49 drawings will be prepared, incorporating general drawings and civil, structural, architectural, mechanical, cathodic protection, and electrical and instrumentation disciplines. The Title 24 energy compliance information will be included on two drawings in the package.

Deliverables: *1) 4 full-size copies of the 65% submittal drawings*
2) 4 full-size copies of the 95% submittal drawings
3) 4 full-size copies of the 100% submittal drawings
4) 1 original full-size drawings, signed and stamped bid drawings (final bid documents)
5) Electronic drawing file in .pdf for each submittal
6) AutoCAD files of the final bid submittal drawings
7) Meeting minutes of review meetings at 65% and 95% submittals
8) Table with responses to City review comments to interim submittals

Task 2-5: Prepare Specifications
Prepare technical specifications for the project. Division 0 and 1 documents will be provided by the City. City standard specifications will be utilized where appropriate. Interim specification submittals will be made at the 65%, 95% and 100% completion levels. City review comments to the interim submittals will be incorporated into the specifications as noted in Task 2-4 above. The Final bid set will be a camera-ready set of signed and stamped specifications, submitted to the City for mass reproduction and advertising.

Deliverables:
1) 4 copies of the 65% submittal specifications
2) 4 copies of the 95% submittal specifications
3) 4 copies of the 100% submittal specifications
4) 1 original signed and stamped camera-ready specifications (final bid documents)
5) Electronic files of the bid submittal (Microsoft Word)

Task 2-6: Prepare Engineer's Estimate of Probable Construction Cost

Prepare Engineer's Estimate of Probable Construction Costs at the 65%, 95%, 100% and Final bid document submittal stages.

Deliverables:
1) 3 copies of the 65% Submittal Preliminary Estimate of Probable Construction Cost
2) 3 copies of the 95% Submittal Preliminary Estimate of Probable Construction Cost
3) 3 copies of the 100% Submittal Preliminary Estimate of Probable Construction Cost
4) 1 copy of the Final Estimate of Probable Construction Cost
5) Electronic .pdf file of Final Estimate of Probable Construction Cost

Phase 3: Bidding and Award

GHD will perform the following services during the bidding and award phase of the project.

Task 3-1: Coordinate and Conduct Prebid Meeting

Participate in the prebid meeting. Prebid meeting will be coordinated and run by the city. Prepare meeting minutes for submittal to the City.

Deliverable: Prebid meeting minutes

Task 3-2: Field Questions and Prepare Addenda

Assist City in responding to inquiries from bidders during the bid period. GHD will respond directly to City on all inquiries, and will not field questions directly from bidders. The budget for this task is based on preparation of two addenda.

Deliverable: Responses to Inquiries from City, as necessary

Phase 4: Construction

GHD will perform the following engineering services during the construction phase of the project.

Task 4-1: Conduct Site Visits

Conduct periodic site visits during construction, as requested by the City. The budget for this task is based on twelve (12) site visits for one GHD staff member during the construction period.

Deliverable: None

Task 4-2: Review Shop Drawings and Submittals

Review shop drawings and other submittals forwarded by the City. GHD will provide responses to the City; City will prepare and distribute formal responses to the Contractor. The budget for this task is based on 40 submittals.

Deliverable: Responses to Shop Drawings and Submittals

Task 4-3: Review RFI/RFC

Review and respond to RFI/RFC forwarded by the City. GHD will provide responses to the City; city will prepare and distribute formal responses to the Contractor. The budget for this task is based on 15 RFI/RFC.

Deliverable: Responses to RFI/RFC

Task 4.4: Review Requests for Change Order

Review requests for change orders generated during the construction period. GHD will provide review comments to the City via email. The budget for this task is based on a maximum of two (2) requests for change orders.

Deliverable: Responses to Change Order Requests

Task 4-5: Review Substitution Requests
Review and respond to requests for substitutions forwarded by the City. The budget for this task is based on five (5) requests for substitution.

Deliverable: Responses to Substitution Requests

Phase 5: Post-Construction
GHD will perform the following engineering services during the post-construction phase of the project.

Task 5-1: Provide Construction Completion Review
GHD will assist City with final completion review and development of punchlist for substantial completion and documentation of final completion.

Task 5-2: Prepare Record Drawings
GHD will prepare record drawings at the conclusion of construction. The record drawings will be based on as-built drawings maintained by the Contractor and the Construction Manager, which will be provided to GHD.

Deliverables: 1) One full-size copy of the record drawings
2) One electronic .pdf file of the record drawings

Compensation

GHD proposes to perform the scope of services on an hourly rate time and materials basis in accordance with our Standard Fees and Conditions, for a "not-to-exceed" fee of $446,343. The total "not-to-exceed" fee will not be exceeded without written authorization by the City.

Schedule

GHD proposes to perform the scope of services immediately upon receipt of written Notice-to-Proceed. The proposed major milestone dates include the following.

Task	Completion Date
Notice to Proceed	June 11, 2014 (estimated)
Kick-off Meeting	2 weeks after NTP
Preliminary Design Charrette	6 weeks after Kick-off Meeting

Draft Basis of Design Report	9 weeks after NTP
BODR Submittal Review Meeting	2 weeks after BODR Submittal
65% Submittal	6 weeks after BODR Review Meeting
65% Submittal Review Meeting	2 weeks after 65% Submittal
95% Submittal	8 weeks after 65% Submittal Review Meeting
95% Submittal Review Meeting	2 weeks after 95% Submittal
100% Submittal	3 weeks after 95% Submittal Review Meeting
100% Submittal Review Meeting	2 weeks after 100% Submittal
Final Submittal	2 weeks after 100% Submittal Review Meeting

Assumptions/Optional Tasks

This service order has been developed in accordance with the following assumptions:

- As requested by GHD, as-builts and other existing information at the tank site, the pump station, and operational information will be provided by the City.
- City will perform all required environmental documentation for the project.
- Access to the site for field investigations and data verification will be provided by the City.
- Any specific hydraulic modelling of the distribution system that may be necessary during the course of the work will be performed by the City. GHD will assist City staff with developing the necessary design criteria and design concepts for the hydraulic modelling task.
- Public meetings or presentations to City Council are not included in the scope of work.
- Environmental documentation is limited to preparation of an Initial Study/Mitigated Negative Declaration. If determined during the analysis that an Environmental Impact Report or visual aesthetic analysis is necessary, additional scope and budget will be required.
- BAAQMD permit application will be submitted by the City and all fees for the permits and City plan check will be paid for by the City.
- Obtaining a building permit is excluded in this scope of work. Any building permits required will be obtained and paid for by the City.
- Removal and remediation of all hazardous and toxic materials will be the responsibility of the City. A Phase I or Phase II Environmental Assessment is not included in the scope of work.
- Two weeks City review time is assumed for all formal submittals. One consolidated set of review comments for each of the submittals will be provided by the City.

GHD can provide additional scope items upon mutual agreement of additional budget.

Please do not hesitate to contact me if you have any questions or need additional information.

Kind regards,

Adrian Clarke, PE
Senior Project Manager

Mark Soldati, PE
Senior Project Manager

GHD - Project Fee Estimating Sheet

Project: City of Santa Clara - New Tank and PS
Prepared By: Mark Soldati
Checked By: Adrian Clarke
Date: 23-Apr-14

Proposal Number:

	GHD																	TOTAL
	Soldati $235	Clarke $195	Kincaid $235	Doctor $245	Lewis $215	Hanzel $155	Brady $125	Sr. Eng $165	Proj Eng $140	CAD Des $140	WP/Admin $90	Hours	Labor	Consumable	Subconsult.	ODC		
Phase A: Project Management																		
A-1 Prepare Monthly Invoice/Progress Report	48										16	64	$12,720	$384				$13,104
A-2 Conduct KO Mtg	4	4	4	4	4						2	22	$4,680	$132				$4,812
A-3 Conduct Meetings	10	8		8	8						4	38	$7,950	$228				$8,178
Phase A Subtotal	**62**	**12**	**4**	**12**	**12**	**0**	**0**	**0**	**0**	**0**	**22**	**124**	**$25,350**	**$744**	**$0**	**$0**	**$0**	**$26,094**
Phase 1: Preliminary Design																		
1-1 Research/review Existing Information	4								4			8	$1,500	$48				$1,548
1-2 Perform Utility Research	4								12		4	20	$2,980	$120	$5,000			$8,100
1-3 Identify/coordinate Permits	4							2	6			12	$2,110	$72				$2,182
1-4 Develop Design Criteria/Design Charrette	12	8	4	8	8	4	8	8	20		8	88	$15,460	$528				$15,988
1-5 Prepare Basis of Design Report	8	4	4	4	4	4	4	8	20	12	12	84	$13,440	$504		$500		$14,444
Phase 1 Subtotal	**32**	**12**	**8**	**12**	**12**	**8**	**12**	**18**	**62**	**12**	**24**	**212**	**$35,490**	**$1,272**	**$5,000**	**$500**	**$0**	**$42,262**
Phase 2: Final Design																		
2-1 Perform Topo Mapping/Surveying	4							8				12	$2,260	$72	$15,400			$17,732
2-2 Conduct Geotechnical Investigations	4							8				12	$2,260	$72	$17,490			$19,822
2-3 BAAQMD Permit Coordination	2			4		8						14	$2,690	$84				$2,774
2-4 Prepare Construction Drawings	62	28	24	40	40	24	40	62	140	468	24	952	$150,300	$5,712	$6,000	$2,000		$164,012
2-5 Prepare Specifications	22	4	8	8	8	4	6	14	22		16	112	$19,710	$672	$1,500			$21,882
2-6 Prepare Estimate of Probable Cost	12	2	4	4	4	4	4	14	22		8	78	$13,220	$468	$500			$14,188
Phase 2 Subtotal	**106**	**34**	**36**	**56**	**52**	**40**	**50**	**106**	**184**	**468**	**48**	**1180**	**$190,440**	**$7,080**	**$40,890**	**$2,000**	**$0**	**$240,410**
Phase 3: Bidding and Award																		
3-1 Coordinate/Conduct Prebid Meeting	4	2						2			1	9	$1,750	$54				$1,804
3-2 Field Questions/Prepare Addenda	12	4						12	20	4	4	56	$9,300	$336				$9,636
Phase 3 Subtotal	**16**	**6**	**0**	**0**	**0**	**0**	**0**	**14**	**20**	**4**	**5**	**65**	**$11,050**	**$390**	**$0**	**$0**	**$0**	**$11,440**
Phase 4: Construction																		
4-1 Conduct Site Visits	8	8		8	8	4	4	4	4			48	$9,460	$288				$9,748
4-2 Review Shop Dwgs/Submittals (40)	10	4		8	8	8	8	32	72			150	$24,410	$900				$25,310
4-3 Review RFI/RFC (15)	6	4		4	4	4	4	12	20			58	$9,930	$348				$10,278
4-4 Review Requests for Change Orders	4	2						4	4			14	$2,550	$84				$2,634
4-5 Review Substitution Requests	2	2						4	4			12	$2,080	$72				$2,152
Phase 4 Subtotal	**30**	**20**	**0**	**20**	**20**	**16**	**16**	**56**	**104**	**0**	**0**	**282**	**$48,430**	**$1,692**	**$0**	**$0**	**$0**	**$50,122**
Phase 5: Post-Construction																		
5-1 Provide Construction Complete Review	8							4				12	$2,540	$72				$2,612
5-2 Prepare Record Drawings	4	2						4		24		34	$5,350	$204				$5,554
Phase 5 Subtotal	**12**	**2**	**0**	**0**	**0**	**0**	**0**	**8**	**0**	**24**	**0**	**46**	**$7,890**	**$276**	**$0**	**$0**	**$0**	**$8,166**
	258	86	48	100	96	64	78	202	370	508	99	1909	$318,650	$11,454	$45,890	$2,500	$0	$378,494
																	Additional Services - As needed per direction of City	$ 67,849
																	FINAL TOTAL	**$ 446,343**

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # MC-1

Date: May 14, 2014

To: City Manager for Council Information

From: Director of Planning and Inspection

Subject: Status of 166 Saratoga Project - Bayto Townhomes

On November 12, 2013, the Home Company submitted an application for development of 33 townhomes on the Bayto Family property at 166 Saratoga Avenue. The application includes a proposal to change the General Plan land use designation from Community Mixed Use (commercial /residential, with density from 19-36 dwellings per acre) to Medium Density Residential (density from 19-36 units per acre), change the zoning from Single Family Residential (R1-6L) to Planned Development (PD) and obtain a Vesting Tentative Map to allow subdividing the site for individual home ownership. A Mitigated Negative Declaration (MND) was prepared and circulated in March 2014.

The project was reviewed by the Historical & Landmarks Commission (HLC) at their regular meeting on April 3, 2014. The MND contained an analysis of the historical considerations of the site and a DPR 523A form was prepared for the Commission's review. At the Commission's request, the applicant returned on May 1, 2014 with additional information on the historic aspects of the property. Two existing residences on the site, dating to 1915 and 1953, would be demolished on this site that was once part of a larger orchard area. The analysis provided to the Commission concluded that the structures are not eligible for historic listing and that the impacts upon cultural historic resources are less than significant. Some residents in the area expressed concern about this property as one of the last examples of the City's orchard heritage. The Commission supported the project, but recommended that the developer look for some way to incorporate an open space heritage element in the plan.

The developer had conducted one neighborhood outreach meeting before being scheduled for HLC review, and held a number of meetings with individuals or groups of residents. In light of concerns expressed by neighbors in the vicinity, including in the properties on Estella Drive that back up to the site and residents in the Vista del Lago Condominiums that take access across this site via an easement, as well as the HLC recommendation, staff is advising the applicant to consider appropriate plan changes and to conduct an additional neighborhood outreach meeting before moving on to Planning Commission for review. No Planning Commission date is currently set.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report: None

I:\PLANNING\2014\CC-CM 2014\166 Saratoga Project Status Rpt CC 05-20-14.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 8A

Santa Clara All-America City 2001

Date: May 6, 2014

To: City Manager for Council Action

From: Director of Water & Sewer Utilities

Subject: Public Hearing: Adoption of Resolutions Approving Water Rate Schedule 2014-1, Recycled Water Rate Schedule 2014-2, and Sewer Service Charges Schedule S-14 for Fiscal Year 2014-15.

EXECUTIVE SUMMARY:

Staff is requesting the adoption of a 12% increase in the potable water rate (a $4.92/month increase based on 12 HCF/month), a 12.7% increase in recycled water base quantity charge, and a 5% increase in Sewer Service Charges (a $1.65/month increase) effective July 1, 2014. Staff is also request the adoption of an increase of the charges for cross-connection control and the minimum charges for water and recycled water service.

Water Rates

When Council approved a 7% water rate increase last year, staff advised Council that a series of wholesale water price increases were proposed by the City's wholesale water suppliers. This year, the wholesale cost of water purchased from the San Francisco Public Utilities Commission is expected to increase by 31.8%, and the Santa Clara Valley Water District Board is expected to adopt a 9.9% increase in the wholesale cost of water. Coupled with reductions in water usage due to conservation, the increased costs have resulted in the need for cost reductions and retail rate increases for the City of Santa Clara. The Utility has previously instituted cost savings initiatives and moderate rate increases, which has minimized rate spikes to our customers, but has also required the short-term use of the Utility's reserve to offset revenue shortfalls. Staff's current evaluation of financial requirements of the water utility indicates that a 12% increase in the potable water rate is needed at this time. In addition, the minimum monthly charges for water service are proposed to increase between 9.4% to 10.3%. The monthly charges for Fire Services and Cross Connection Control are proposed to be increased from between 9.4% and 10.2%. These increased rates and charges coupled with cost reduction strategies are sufficient to meet the revenue requirements of the Water Fund for FY 2014-15.

Recycled Water Rates

Staff is proposing that the base recycled water rate be increased by 12.7% from $2.05/HCF to $2.31/HCF. This increase will offset increased wholesale cost of recycled water from South Bay Water Recycling. Recycled water customers who meet certain criteria receive a credit that reduces the base recycled water rate. Customers using recycled water for Industrial Use will receive a $0.36/HCF credit, Landscape Irrigation Otherwise Served by a Private Well will receive a $0.76/HCF credit, and Industrial Process Water Otherwise Served by a Private Well will receive a $1.22/HCF credit. A 12.7% increase to the recycled water retail base quantity charge is sufficient to meet the revenue requirements of the Recycled Water Fund for FY 2014-15, while still allowing recycled water prices to provide a significant financial incentive for its use.

Sewer Rates

The sewer service and use fees are the primary source of revenue to fund the Sewer Utility. The cost of treating the sewage at the jointly owned San Jose-Santa Clara Regional Wastewater Facility (SJ/SC RWF) is the major portion (70%) of the Sewer Utility operating budget. In addition to the operating costs, sewer service and use charges are a source of funding for sewer capital projects both within the City boundaries and at the SJ/SC RWF. The SJ/SC RWF staff has proposed $61.6 million in capital improvement projects in FY 2014-15, with the City's portion being $8.7 million. In addition, the City has proposed a total of $5.1 million in collection system improvement projects in the next fiscal year. Even with the proposed increase in sewer service and use fee, the sewer utility will be using capital reserves in Fiscal Year 2014-15 to mitigate the magnitude of the proposed rate increase.

Public Outreach

A notice, as required by Article XIII D of the California Constitution, was sent to all current utility customers in the City (22,639 separate utility customers from the City's Utility Billing System) with a range of possible rate increases indicated that could be up to 13% for the water utility, up to 12.7% for the base recycled water rate, and sewer service charge increases of up to a 10% increase. The notice also included a detailed table showing the potential sewer rate increases for each customer type. This notice was mailed on March 28, 2014, more than 45 days prior to tonight's meeting. The proposed rate increases are within the range of possible increases provided in the notice.

At the Council meeting, Council will need to open the Public Hearing and hear protests regarding the proposed rates. In addition, the Council meeting will be the last opportunity for City utility customers to return written protests against the proposed rates. At the close of the Public Hearing the protests will be tabulated. If a majority of utility customers protest the proposed rates, the Council will be unable to raise the water or sewer rates. If there is not a majority protest of the rates, Council may increase the utility rates limited to the range contained in the written notice.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The wholesale price increases implemented by our water suppliers coupled with reduced sewer flows and reduced water sales resulting from the economic downturn and conservation efforts have resulted in the need for retail water rate and sewer rate increases. Staff has proposed implementing a series of steady increases over several years to minimize rate shock to our customers. The proposed water rate increases will meet the expected financial needs of the Water Utility. The Sewer Utility requires a series of rate increases to fund the City's share of needed improvements to the SJ/SC RWF and allow the Sewer Utility to qualify for debt financing for critical in-City capital projects.

The identified disadvantages include: our customers will see their water and sewer charges increase, and the Utilities' use of cash reserves to minimize the rate increases reduces each Utility's reserves and reduces the interest revenues the Utilities receive from reserves.

ECONOMIC/FISCAL IMPACT:

The Water and Sewer Utilities need the additional revenue provided by the proposed rate increases in order to meet the budgetary requirements for Fiscal Year 2014-15 including funding necessary capital improvements to

the City's infrastructure, infrastructure at the SJ/SC RWF, and increased resource, operations and maintenance costs.

The proposed water rate will increase a typical single-family residential consumer bill by approximately $4.92 per month after July 1, 2014 (to $45.60 based on 12 HCF/month). The potential impact to the average non-residential customer's monthly water bill will vary dependant on the volume of water used.

Sewer service fees for single family and multifamily residential will increase by $1.65 per month from $33.00 to $34.65 per month on July 1, 2014. The potential impact to the average non-residential customer's monthly sewer bill will vary by customer type.

Staff has recently completed a study and determined that even with the adoption of the proposed increases, Santa Clara residents and customers continue to receive the lowest combined water, sewer, and electric utility rates in the nine Bay Area Counties.

RECOMMENDATION:

That the Council:

1. Open the public hearing to receive testimony regarding the proposed changes to the water, recycled water, and sewer rates,
2. Adopt a resolution approving Water Rate Schedule 2014-1, Recycled Water Rate Schedule 2014-2, setting the City of Santa Clara's water rates for FY 2014-15, effective immediately for water delivered on or after June 1, 2014 and billed beginning July 1, 2014, and
3. Adopt a resolution approving Sewer Service Schedules S-14 setting sewer service charges for FY 2014-15 effective immediately for services provided on or after June 1, 2014 and billed on or after July 1, 2014.

Christopher L. de Groot
Director of Water and Sewer Utilities

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:

1) Resolution for Water Service Charges and Recycled Water Service Charges
2) Resolution for Sewer Service Charges

I:\Water\MEMOS\AGENDA\2014\Rate Hearing\AR_ADOPT 2014-15 water sewer RATES.doc

RESOLUTION NO.

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING WATER RATE SCHEDULE 2014-01 AND RECYCLED WATER RATE SCHEDULE 2014-02 FOR CITY SERVICE

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, all water furnished to utility customers by the City of Santa Clara shall be charged, paid for and supplied only in accordance with such applicable schedules, rules and regulations as the City Council shall adopt pursuant to the provisions of Section 13.15.010 [entitled "Purpose and Intent"] of "The Code of the City of Santa Clara, California" ("SCCC") and the Rules and Regulations for Water Service of the City of Santa Clara;

WHEREAS, Article XIII D of the California Constitution requires that utility customers be given a minimum of 45 days notice of any proposed rate increase;

WHEREAS, notice of a Public Hearing was mailed to utility customers on March 28, 2014, at least 45 days prior to the Public Hearing;

WHEREAS, the notice was sent to 22,639 utility customers;

WHEREAS, the Council has reviewed the Water Rate Schedule 2014-01 and Recycled Water Rate Schedule 2014-02 (the "Rate Schedules") attached and incorporated into this Resolution by reference;

WHEREAS, the amounts shown on the Rate Schedules reflect the actual costs to provide utility services; and

WHEREAS, the Council has conducted a Public Hearing at which it reviewed all protests regarding the proposed rate increases.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That based on a tabulation of all protests received prior to the close of the Public Hearing, ____ protests were received which do not constitute a majority of affected utility customers.

2. That Water Rate Schedule 2014-01 and Recycled Water Rate Schedule 2014-02, both attached to this Resolution and incorporated by this reference, are herby adopted and shall be effective per Section 4 of this Resolution.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

4. Effective date. All previously adopted water rate schedules, to the extent that they are inconsistent with those contained herein, are superseded by those charges provided for hereinabove as follows: Commencing with the billing cycle for water service provided on or after June 1, 2014 and billed beginning July 1, 2014, and each subsequent billing cycle thereafter as set forth in Water Rate Schedule 2014-01 and Recycled Water Rate Schedule 2014-02.

////

////

////

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___th DAY OF MAY, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Water Rate Schedule 2014-01
2. Recycled Water Rate Schedule 2014-02

H:\budget\Water Rate Res & Sched 2014-01&02Revised.doc

CITY OF SANTA CLARA

WATER RATE SCHEDULE 2014-01

(Replaces Water Rate Schedule 2013-1a)

ADOPTED BY RESOLUTION NUMBER _____, May 20, 2014

RATE W-1, METERED POTABLE WATER SERVICE

Applicability - Applicable to all metered potable water service.

(1) MONTHLY QUANTITY CHARGES:

All potable water use, **$1.65** per Hundred Cubic Feet (HCF). The Monthly Quantity Charge recovers the annual cost to operate the Water Utility, other than groundwater charges, treated water purchased from others for resale, and energy.

(2) WATER & ENERGY COST ADJUSTMENT (WECA) CHARGE:

A Water and Energy Cost Adjustment (WECA) Charge of **$2.15** per HCF shall be added to all Monthly Quantity Charges. The WECA Charge recovers the cost the City pays annually for groundwater charges, treated water purchased from others for resale, and energy.

The sum of (1) and (2) is **$3.80** per HCF.

(3) MINIMUM MONTHLY METER RATES:

The minimum monthly meter rate will entitle the customer to the quantity of water that monthly minimum charge will purchase at the Monthly Quantity Charge plus WECA Charge.

WATER METER SIZE	MINIMUM CHARGE
5/8 x 3/4 inch	$ 11.85
1 inch	18.90
1½ inch	34.35
2 inch	48.50
3 inch	135.00
4 inch	190.00
6 inch	375.00
8 inch	575.00
10 inch	705.00
12 inch	910.00

(4) SPECIAL CONDITIONS:

(a) OUTSIDE CITY LIMITS: Water service will not normally be provided to properties outside the City Limits except in special situations authorized by City Council. All rates shall be at one and one-half (1.5) times regular City rates.

(b) AGRICULTURAL USERS: Customers who receive water from the City for agricultural purposes, and upon application and presenting evidence to the City that such water qualifies for the lower agricultural pump taxes levied by the Santa Clara Valley Water District, shall receive a credit of $0.26 per HCF for the quantities of water used.

Rate W-2 Not used.

RATE W-3, FIRE SERVICES

Applicability - Applicable to separate fire services (automatic sprinklers, private fire hydrants, etc.) required by the City of Santa Clara or insurance underwriters.

(1) MONTHLY FIRE SERVICE CHARGE:

SERVICE SIZE	MONTHLY CHARGE
2 inch	$ 13.15
4 inch	20.65
6 inch	35.50
8 inch	51.00
10 inch	78.00
12 inch	105.00

(2) SPECIAL CONDITIONS:

Fire Service charges are imposed for maintenance and operation of the metering components, including capital replacement. No charge will be made for water used to extinguish fires or for testing. Any other usage of water through leakage or for general use shall result in the imposition of regular water service rates (RATE W-1) for a minimum of three (3) billing cycles or longer, until such time as illicit use of water through the fire service connection has ceased. Continued water usage through a fire service is a violation of City's Rules and Regulations and may cause interruption of service.

RATE W-4, CROSS CONNECTION CONTROLS

Applicability - Applicable to all service connections where a public cross connection control device has been required by the City or County Health Department.

(1) MONTHLY CHARGE:

SIZE OF SERVICE	MONTHLY CHARGE
1 inch	$ 10.00
2 inch	19.35
3 inch	27.35
4 inch	34.25
6 inch	48.00
8 inch	59.00
10 inch	71.25

CITY OF SANTA CLARA

RECYCLED WATER RATE SCHEDULE 2014-02

(Replaces Water Rate Schedule 2013-2a)

ADOPTED BY RESOLUTION NUMBER _____, May 20, 2014

RATE RW-1, METERED RECYCLED WATER SERVICE

Applicability - Applicable to all metered service connections served by the City of Santa Clara Recycled Water System, except for those specific recycled water uses described in Rates RW-2 and RW-3.

(1) MONTHLY QUANTITY CHARGES:

All use: $2.31 per hundred cubic feet (HCF).

(2) MINIMUM MONTHLY METER RATES:

The minimum monthly meter rate will entitle the customer to the quantity of water which the stated monthly minimum charge will purchase at the Monthly Quantity Charge.

WATER METER SIZE	MINIMUM CHARGE
5/8 x 3/4 inch	$ 11.85
1 inch	18.90
1½ inch	34.35
2 inch	48.50
3 inch	135.00
4 inch	190.00
6 inch	375.00
8 inch	575.00
10 inch	705.00
12 inch	910.00

(3) SPECIAL CONDITIONS:

(a) OUTSIDE CITY LIMITS: Water service will not normally be provided to properties outside the City Limits except in special situations authorized by City Council. All rates shall be at one and one-half (1.5) times regular City rates.

(b) LANDSCAPE IRRIGATION OTHERWISE SERVED BY A PRIVATE WELL: Customers who receive recycled water from the City for landscape irrigation purposes and upon application and presenting evidence to the City that such water would otherwise be provided by a well which qualifies pump taxes levied by the Santa Clara Valley Water District, shall receive a credit of $0.76 per HCF for the quantities of water used.

(c) INDUSTRIAL PROCESS WATER: Customers who receive recycled water from the City for use in an industrial process, shall receive a credit of $0.36 per HCF for the quantities of water used.

(d) INDUSTRIAL PROCESS WATER OTHERWISE SERVED BY A PRIVATE WELL: Customers who receive recycled water from the City for use in an industrial process and upon application and presenting evidence to the City that such water would be otherwise provided by a well which qualifies for the pump taxes levied by the Santa Clara Valley Water District, shall receive a credit of $1.22 per HCF for the quantities of water used, plus a fixed rate of $50.00 per month.

RATE RW-2, BULK RECYCLED WATER

Applicability - Applicable to all reclaimed water delivered in bulk quantities to tank trucks or similar vessels.

(1) MINIMUM CHARGE:

$10.00 per truck or vessel

(2) QUANTITY CHARGE:

$5.00 per thousand gallons, to the next highest thousand gallons based on the stated capacity of the truck or vessel.

RATE RW-3, FIRE SERVICES

Applicability - Applicable to separate fire services (automatic sprinklers, private fire hydrants, etc.) required by the City of Santa Clara or insurance underwriters.

(1) MONTHLY FIRE SERVICE CHARGE:

SERVICE SIZE	MONTHLY CHARGE
2 inch	$ 13.15
4 inch	20.65
6 inch	35.50
8 inch	51.00
10 inch	78.00
12 inch	105.00

(2) SPECIAL CONDITIONS:

Fire Service charges are imposed for maintenance and operation of the metering components, including capital replacement. No charge will be made for water used to extinguish fires or for testing. Any other usage of water through leakage or for general use shall result in the imposition of regular water service rates (RATE RW-1) for a minimum of three (3) billing cycles or longer, until such time as illicit use of water through the fire service connection has ceased. Continued water usage through a fire service is a violation of City's Rules and Regulations and may cause interruption of service.

RATE RW-4, CROSS CONNECTION CONTROLS

Applicability - Applicable to all service connections where a public cross-connection control device has been required by the City or County Health Department.

(1) MONTHLY CHARGE:

SIZE OF SERVICE	MONTHLY CHARGE
1 inch	$ 10.00
2 inch	19.35
3 inch	27.35
4 inch	34.25
6 inch	48.00
8 inch	59.00
10 inch	71.25

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, PURSUANT TO SECTION 13.10.090 (ENTITLED "RATES- USERS WITHIN CITY") OF THE "CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" ESTABLISHING MONTHLY SEWER CHARGES

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Section 13.10.090 of "The Code of the City of Santa Clara" (SCCC") provides that the City Council may by resolution establish the monthly sewer service charges;

WHEREAS, Article XIII D of the California Constitution requires that utility customers be given a minimum of 45 days notice of any proposed rate increase;

WHEREAS, notice of a Public Hearing was mailed to utility customers on March 28, 2014, at least 45 days prior to the Public Hearing;

WHEREAS, the notice was sent to 22,639 utility customers;

WHEREAS, the City Council has reviewed the Schedules S-14 attached and incorporated into this Resolution by reference;

WHEREAS, the amounts shown on Schedule S-14 reflect the actual costs to provide utility services; and

WHEREAS, the City Council has conducted a Public Hearing at which it reviewed all protests regarding the proposed rate increases.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That based on a tabulation of all protests received prior to the close of the Public Hearing, ___ protests were received, which do not constitute a majority of affected utility customers.

2. That Schedules S-14 attached to this Resolution and incorporated by this reference, is herby adopted and shall be effective July 1, 2014. All previously adopted monthly sewer service charges, to the extent that they are inconsistent with those contained herein, are superseded by those charges as set forth in Schedule S-14 beginning on July 1, 2014, and for all subsequent billing cycles.

3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

////

////

////

////

////

////

////

////

////

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___th DAY OF MAY, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Schedule S-14

SCHEDULE S-14
MONTHLY SEWER SERVICE CHARGES
EFFECTIVE JULY 1, 2014

A. Residential Users:
Single family dwelling units (including single family dwellings with accessory units): $34.65 per month

Multiple dwelling structures including, but not limited to, duplexes, retirement homes, mobile home courts, college dormitories and high-rise apartment, etc. per dwelling unit: $34.65 per month

B. Miscellaneous Users:
For all users other than residential users and major commercial and industrial users, the monthly service charges for each month shall be as follows, depending on the appropriate North American Industrial Classification System (hereinafter referred to as NAICS class):

NAICS CLASS	DESCRIPTION	SERVICE CHARGE $/HCF[1]	SEWAGE VOLUME AS A PERCENTAGE OF METERED WATER USE
111998, 311XXX, 3121XX	Food and Kindred Products	$ 8.73	70%
322XXX	Paper	$ 9.20	80%
211112, 325XXX	Industrial Chemical	$ 6.60	90%
332812, 332813	Metal Plating	$ 3.22	90%
332XXX, 333XXX, 33411X, (excepting 332812, 332813, 333314)	Machinery Manufacturers	$ 5.83	90%
334XXX, 335XXX, 33632X (excepting 33451X, 33411X, 334611)	Electric & Electronic Equip.	$ 3.47	90%
4411XX, 4412XX, 4471XX	Auto Dealers & Service Station	$ 4.53	90%
722110, 722410	Restaurants	$ 8.77	90%
721XXX	Motels & Hotels	$ 4.45	90%
561740, 811490, 8123XX	Laundries	$ 3.90	90%
561990	Industrial Water Treatment	$ 3.01	90%
8111XX, 812930	Repair Shops & Car Washes	$ 4.49	90%
713XXX	Amusement Parks	$ 4.66	90%
621XXX, 622XXX, 623XXX	Hospitals & Convalescent Homes	$ 4.25	90%
611XXX	Schools & Colleges	$ 4.57	24%
8131XX	Churches	$ 4.35	35%
Commercial/Industrial/Miscellaneous not otherwise specified in this schedule of charges		$ 3.92	90%

In no case shall the minimum charge be less than $34.65 per month.

[1] HCF is the volume of sewage measured in hundred cubic feet, equal to 748 gallons

The volume of sewage shall be based upon a fixed percentage of water usage as noted, or based on standard methods acceptable to the Director of Water and Sewer Utilities (hereinafter "Director").

C. Major Commercial and Industrial Users are those having (1) a sewage discharge of at least 25,000 gallons per day, or having a daily discharge which is (2) intermittent or irregular in strength, amount or nature. Major Commercial and Industrial Users shall have monthly sewer charges, which may consist of all of the following charges:

Annual Capital Cost Recovery:

Volume:	$752,634 per million gallons per day of flow capacity
BOD:	$ 35,192 per 1,000 lbs. per day of B.O.D. removal capacity[2]
SS:	$ 33,099 per 1,000 lbs. per day of S.S. removal capacity[3]
NH_3:	$157,607 per 1,000 lbs. per day of NH3 removal capacity[4]

Operating and Maintenance Cost Recovery:

Volume:	$1,351.00 per million gallons.
BOD:	$ 241.98 per 1,000 lbs.[2]
SS:	$ 388.14 per 1,000 lbs.[3]
NH_3:	$3,126.96 per 1,000 lbs.[4]

D. All classes of user shall be charged $1.67 per year for infiltration/inflow, which is already included in the rates shown under Tables A and B.

The volume of sewage shall be based upon a fixed percentage of water usage as noted, or based on standard methods acceptable to the Director.

The City may require the installation of special metering and sampling devices whenever the Director deems that such devices are required to determine the volume and/or strength of the sewage. A customer may also request the installation of a special metering device. Whenever special metering devices are installed, they shall be devices approved by the Director, and the cost of furnishing and installing said devices shall be borne by the customer.

---

[2] BOD, Biochemical Oxygen Demand, is the quantity of oxygen utilized in the biological oxidation of organic matter under standard laboratory conditions for 5 days at a temperature of 20 degrees Centigrade. The determination of the charge for BOD is as follows: BOD in parts per million x 8.34 x volume in million gallons = pounds of BOD.

[3] SS, Suspended Solids, is that which either floats on the surface or is in suspension in sewage and which is determined by laboratory filtering. The determination of the charge for Suspended Solids is as follows: SS in parts per million x 8.34 x volume in million gallons = pounds of Suspended Solids.

[4] NH_3, Ammonia, is that form of nitrogen in the tri-negative oxidation state, which is chemically definable as the compound NH_3. The determination of the charge for Ammonia is as follows: NH_3 in parts per million x 8.34 x volume in million gallons = pounds of Ammonia.

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 9A

Date: May 5, 2014

To: City Manager for Council Action

From: Director of Public Works / City Engineer

Subject: Award of Contract: Street Corporation Yard Bunker Wash Area Sewer Connection Project (CE 13-14-07)

Contractor: K.J. Woods Construction, Inc.

Address: 1485 Bayshore Boulevard, #149
San Francisco, CA 94124

Bid Amount: $88,000.00

EXECUTIVE SUMMARY:

The Street Corporation Yard Bunker Wash Area Sewer Connection Project (Project) includes construction of approximately 380 feet of sewer line in the Street Corporation Yard and connection to the existing sewer main in Walsh Ave. Currently this area is connected to the storm drain which is not permitted under the current Regional Water Quality Control Board regulations. The Project also includes abandonment of existing storm drain pipe, installing a sanitary sewer manhole and cleanout, and other necessary work to make this Project complete.

On April 30, 2014, bids were opened for construction of the Project. Five (5) bids were received ranging from $88,000.00 to $155,890.00 (see Bid Summary below). The lowest bid of $88,000.00 submitted by K.J. Woods Construction, Inc. is 9.0% below the Engineer's Estimate of $96,710.00. K.J. Woods Construction, Inc. is very familiar with this type of work in this area as they are the contractor for the two current sanitary Sewer Improvement projects in the City. The bid was reviewed for compliance with the terms and conditions of the Bid Documents and any necessary minor corrections were made. K.J. Woods Construction, Inc. has been determined to be the lowest responsive and responsible bidder, therefore, staff recommends awarding the contract to K.J. Woods Construction, Inc.

BID SUMMARY	**April 30, 2014**	
ENGINEER'S ESTIMATE:	**$96,710.00**	
Contractor	**Total Bid**	**Percentage above/below Engineer's Estimate**
K.J. Woods Construction, Inc.	$88,000.00	9.0% below
Sanact Inc.	$89,220.00	7.7% below
Express Plumbing and Sewer Service	$98,850.00	2.2% above
Cratus Inc.	$134,200.00	38.8% above
Rodan Builders, Inc.	$155,890.00	61.2% above

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The Award of Contract will allow the construction to proceed on schedule and enable the City to comply with regulatory agency requirements. There may be some inconvenience to the public during construction.

ECONOMIC/FISCAL IMPACT:

The cost of the contract is $88,000.00 plus 10% for any potential change orders in the amount of $8,800.00 for a total cost of $96,800.00. Funding for this Project is available in the Street Corporation Yard Renovation (538-4443-80XX0-6054). There is no additional cost to the City.

RECOMMENDATION:

That the Council:

1. Award the Public Works Contract for the Street Corporation Yard Bunker Wash Area Sewer Connection Project (CE 13-14-07) to K.J. Woods Construction, Inc. in the amount of $88,000.00; and
2. Authorize the City Manager to execute change orders up to approximately 10% of the original contract price, or $8,800.00, for a total amount not to exceed amount of $96,800.00.

Rajeev Batra

Rajeev Batra
Director of Public Works / City Engineer

APPROVED:

Julio J. Fuentes
City Manager

Certified as to Availability of Funds:
538-4443-80XX0-6054 $ 96,800.00

for Gary Ameling
Director of Finance / Assistant City Manager

MAJORITY VOTE OF COUNCIL

Documents Related to this Report:
1) None

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13A

Santa Clara All-America City 2001

Date: April 28, 2014

To: City Manager for Council Action

From: Director of Parks and Recreation

Subject: Request to Approve and Accept a Donation of $10,000 from the White Living Trust for Senior Center Activities at the Santa Clara Senior Center

EXECUTIVE SUMMARY:

The White Living Trust has offered to donate $10,000 to support activities at the Santa Clara Senior Center on behalf of Joanne White.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of this donation will provide $10,000 to help fund Santa Clara Senior Center activities.

ECONOMIC/FISCAL IMPACT:

Approval of this donation will provide $10,000 to help fund the Santa Clara Senior Center activities (084-1114-59650-(A)20903).

RECOMMENDATION:

That the Council:

1. Approve and accept a donation of $10,000 from The White Living Trust for Senior Center Activities at the Santa Clara Senior Center (084-1114-59650-(A)-20903); and,
2. Approve an additional appropriation of $10,000 for the Senior Center Activities at the Santa Clara Senior Center (084-1114-87XXX-(A)20903); and,
3. Authorize the transmittal of a letter of appreciation signed by the Mayor and City Manager.

James Teixeira

James Teixeira
Director of Parks & Recreation

Certified as to Budget Form OK JCH.

Gary Ameling
Director of Finance/
Assistant City Manager

APPROVED:

Julio J. Fuentes
City Manager

FIVE COUNCIL VOTES

Documents Related to this Report: None

I:\Parks\Agendas\Donation\2014\The White Trust for Senior Center Activities 14.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13B

Date: May 5, 2014

To: City Manager for Council Action

From: Acting Housing and Community Services Division Manager

Subject: Minor Amendment to the City's Fiscal Year 13-14 Annual Plan for use of CDBG and HOME Entitlement Funds – Transfer of additional CDBG funding for the Outreach & Escort Special Needs Transportation Program

EXECUTIVE SUMMARY:

The FY 2013-14 appropriation for the Outreach & Escort (O&E) Special Needs Transportation program will be insufficient to subsidize all of the projected FY 13-14 ride demand. Current year funding, $32,730 has run out as of March 26, 2014. O&E has requested an additional appropriation of $9,000 to continue the program through the end of the fiscal year. By approving the additional appropriation, Council will also approve a minor amendment to the City's FY 2013-14 Annual Plan for use of CDBG and HOME Entitlement Funds.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The added appropriation assures that the $1.00 per 1-way ride subsidy is available for all rides taken by City residents through June 30, 2014. The subsidy reduces the fare charged from $4.00 to $3.00 per 1-way ride.

ECONOMIC/FISCAL IMPACT:

The $9,000 of CDBG program income will be transferred from the Neighborhood Conservation & Improvement Program to the Housing & Community Services Division Contracted Services account. The additional funds will increase the FY 2013-14 appropriation for the O&E program to $41,730.

///

///

///

RECOMMENDATION:

That Council:

1. Approve a minor amendment to the City's 2013-14 Annual Plan for use of Community Development Block Grant and Home Investment Partnerships Act Entitlement Funds, in the amount of $9,000 to continue to fund the Outreach & Escort special needs transportation program through the end of Fiscal Year 2013-14; and
2. Approve the transfer and appropriation of funds in the amount of $9,000 of CDBG program income from the Neighborhood Conservation & Improvement Program [562-5543-54650-5542-(G)CDBG] to the Housing & Community Services Division Contracted Services account [562-5544-80810-5510-(I)2454-(G)CDBG] to provide additional CDBG funding for the Outreach & Escort Special Needs Transportation Program; and

3. Approve and Authorize the City Manager to execute Amendment No. 1 to the Public Service Grant Agreement with Outreach & Escort, Inc. and all related documents to provide special needs transportation services.

Kevin L. Riley
Director of Planning & Inspection

APPROVED:

Julio J. Fuentes
City Manager

Certified as to Availability of Funds:
562-5543-54650-5552-(G)CDBG $ 9,000

Gary Ameling
Director of Finance/
Assistant City Manager

FIVE COUNCIL VOTES

Documents Related to this Report:
1) Amendment No. 1 to the Agreement Between the City of Santa Clara, California and Outreach & Escort

F:\Monitoring\CDBG Public Services\Outreach & Escort\2013-2014\Agenda report amendment 5-20-14.doc

AMENDMENT NO. 1
TO THE AGREEMENT BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND

OUTREACH & ESCORT, INC.

PREAMBLE

This agreement ("Amendment No. 1") is made and entered into on this _____ day of ____ _____, 201__, ("Effective Date") by and between Outreach & Escort, Inc. a California nonprofit corporation, with its principal place of business located at 926 Rock Avenue, Suite 10, San Jose, California 94131 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Amendment No. 1."

RECITALS

A. The Parties previously entered into an agreement entitled "Public Service Grant Agreement By and Between the City of Santa Clara, California and Outreach & Escort", dated August 28, 2012 (the "Original Agreement"); and

B. The Parties previously entered into an agreement renewal entitled "Letter of Renewal, FY 2013-14" dated June 11, 2013 (the "Agreement Renewal"); and

C. The Parties entered into the Original Agreement and Agreement Renewal for the purpose of having Contractor provide special needs transportation services, and the Parties now wish to amend the Agreement Renewal, to increase the funding amount.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AMENDMENT PROVISIONS

That first paragraph of the Agreement Renewal is hereby amended by deleting the existing first paragraph in its entirety and replacing it with the following:

> "With this letter, the City of Santa Clara ("City") offers to renew the current Public Service Grant Agreement, dated August 28, 2012 ("Original Agreement"), between the City and Outreach & Escort, Inc. ("Corporation") for the Special Needs Transportation Program for the fiscal year beginning July 1, 2013 and ending June 30, 2014. The funding amount for the second year is FORTY ONE THOUSAND SEVEN HUNDRED THIRTY and 00/100 Dollars ($41,730). The renewal year funding amount is contingent on the availability of federal Community Development Block Grant Funds"; and

That Section 1. Budget of Exhibit B2, "Outreach & Escort Special Needs Transportation, 2013-14 Budget and Basis for Reimbursement" of the Agreement Renewal is hereby amended by deleting the existing section, in its entirety and replacing it with the following:

"Cost Category	Amount
Administration	$ 7,200
Client Farebox Assistance	$ 34,530
TOTAL BUDGET	**$ 41,730"**

2. TERMS

All other terms of the Original Agreement which are not in conflict with the provisions of this Amendment No. 1 shall remain unchanged in full force and effect. In case of a conflict in the terms of the Original Agreement and this Amendment No. 1, the provisions of this Amendment No. 1 shall control.

3. COUNTERPART/FACSIMILE SIGNATURE

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 1 as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Amendment No. 1 shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

OUTREACH & ESCORT, INC.
a California nonprofit corporation

By: Kathy B. Heatley
(Signature of Person executing the Agreement on behalf of Contractor)

Name: Kathryn B. Heatley

Title: President/CEO

Local Address: 926 Rock Avenue, Suite 10
San Jose, CA 95131

Email Address: katieh@outreach2.org

Telephone: (408) 436-2865

Fax: (408) 382-0470

"CONTRACTOR"

S:\Attorney\AGREEMENTS\Amendments\Amendment No. 1 - Form.doc

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13C

Date: May 16, 2014

To: City Manager for Council Action

From: Director of Planning and Inspection

Subject: Neighborhood Preservation Ordinance Ad-hoc Committee

EXECUTIVE SUMMARY:

At the regular meeting of April 22, 2014, the City Council "established an ad-hoc committee comprised of Council Members Marsalli and O'Neill, 2 members from the Planning Commission and 1 member of the Historical Landmarks Commission." This committee will address potential amendments to the zoning code that could clarify allowable housing types and arrangements within single family neighborhoods and facilitate code enforcement related to non-compliant housing.

The Planning Commission and the Historical & Landmarks Commission have each appointed members as directed by Council and each has also appointed an alternate. Those members are, respectively, Planning Commissioners Deborah Costa and Keith Stattenfield seated and Commissioner Steve Kelly as alternate, and Historical & Landmarks Commissioner Brian Johns seated and Commissioner Spike Standifer as alternate. It is recommended that the Council also select an alternate in the event that Council members O'Neill and Marsalli can not attend the meetings.

Once the alternate is selected, staff will prepare background material for the committee and schedule the initial meeting date, time and location. A substantial list of names of interested residents was submitted and staff is creating a database for public notification of these meetings. Any additional direction from Council on other aspects of this Committee effort can be incorporated into the process.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Appointment of an alternate will better ensure attendance and facilitate scheduling of committee meetings.

ECONOMIC/FISCAL IMPACT:

No impacts other than staff time and expense are anticipated.

RECOMMENDATION:

That Council appoint an alternate to serve on the neighborhood preservation ordinance ad-hoc committee and provide any additional direction to staff.

Kevin L. Riley
Director of Planning and Inspection

APPROVED:

for Julio J. Fuentes
City Manager

Documents Related to this Report: None

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13D

Date: May 16, 2014

To: City Manager for Council Action

From: Economic Development Officer./ Assistant City Manager
Director of Electric Utility

Subject: Resolution Authorizing City Manager to Negotiate and Execute a Purchase and Sale Agreement for Approximately 8.75 Acres of Vacant Land located at Reed and Grant Streets for Future Utility Use (APNs: 224-02-002, 224-02-013, 224-02-014, 224-02-020, and 224-02-023).

EXECUTIVE SUMMARY:

Bradford Manufacturing Company (BMC) owns approximately 8.75 acres of vacant land next to the Reed Street Dog Park on Reed and Grant Streets (Exhibit A). BMC has been marketing the property for sale and the City has a desire to purchase the property for future electric utility use.

The Property has undergone a thorough environmental review and was the subject of a hazardous material clean up under the California Department of Toxic Substance Control (DTSC). The Property has been remediated to a condition acceptable to DTSC and has a recorded deed restriction. The deed restrictions expressly allow for land uses such as commercial, industrial, parks, and open space. The Property is currently zoned for commercial/industrial uses. Additional environmental review and remediation would be necessary for removal of the land use covenant for land uses such as residential, schools or daycare.

Terms of the proposed transaction are contained in a Letter of Intent to Purchase (Exhibit B) and are summarized below. Approval of the recommended action would allow the City Manager to finalize and execute the Purchase and Sale Agreement (Agreement) consistent with these terms.

Key terms of the proposed Agreement include:

Property: 8.75 acres of vacant land near Reed Street Dog Park (APNs: 224-02-002, 224-02-013, 224-02-014, 224-02-020, and 224-02-023).

Price: $8,500,000.00 (approximately $22.30 per square foot)

Deposit: $100,000, due upon execution of Agreement. This deposit is refundable until the end of the Due Diligence Period. A second $100,000 deposit will be due upon release of contingencies at the end of the Due Diligence Period.

Due Diligence Period: 45 days after the execution of Agreement. During this period the City will review the condition of the property including among other items, title and environmental condition. BMC will provide the City with information regarding the environmental work conducted on the property and secure a letter from the Department of Toxic Substance Control (DTSC) indicating that the Property is safe for various potential uses including commercial, industrial, parks and open space. With the BMC's assistance, the City will seek to secure a letter agreement with adjacent property owners for acquisition of their property.

Close of
Escrow: 15 days following the removal of all conditions.

Broker Fees: The Seller will be responsible for any broker fees related to the transaction.

ADVANTAGES AND DISADVANTAGES OF ISSUE:
Large parcels of vacant land adjacent to existing City property are not available for sale often. Acquisition of this property will provide the City/Silicon Valley Power (SVP) with potential future opportunities to accommodate its operation.

ECONOMIC/FISCAL IMPACT:
The purchase price for the Property is $8,500,000. In addition, the City may incur costs associated with environmental consultants to review the environmental condition of the property and for standard closing and escrow costs related to the transaction. A total of $9,000,000 in funds have been requested for this capital project in order to provide sufficient funding for necessary improvements (such as fencing/security) after the City obtains title to the Property. Sufficient funds are available in the Electric Department operating fund balance, account 091-44199, to cover the appropriations.

RECOMMENDATION:
That the Council

1) adopt a Resolution authorizing City Manager to negotiate and execute a Purchase and Sale Agreement with Bradford Manufacturing Company for the acquisition of approximately 8.75 acres of vacant land located at Reed and Grant Streets for future electric utility use;
2) approve the establishment of the Capital Improvement Project 2412 – Reed Street Property for Future Utility Use; and
3) approve the appropriation of $9,000,000.00 to the Reed Street Property for Future Utility Use project in the account 591-1377-80200-2412 from Electric operating cash 091-44199.

Ruth Shikada
Economic Development Officer/
Assistant City Manager

John C. Roukema
Director of Electric Utility

Certified as to Availability of Funds:
091-44199 $9,000,000.00

APPROVED:

Julio J. Fuentes
City Manager

Gary Ameling
Director of Finance / Assistant City Manager

FIVE COUNCIL VOTES

Documents Related to this Report:
1) ***Resolution***
2) ***Property Map***
3) ***Letter of Intent to Purchase***

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, AUTHORIZING CITY MANAGER TO EXECUTE PURCHASE AND SALE AGREEMENT FOR REED STREET PROPERTY

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Bradford Manufacturing Company ("BMC") owns approximately 8.75 acres of vacant land next to the Reed Street Dog Park on Reed and Grant Streets, as noted on Exhibit A to this Resolution (the "Property");

WHEREAS, BMC has been marketing the Property for sale and the City has a desire to purchase the property for future electric utility use;

WHEREAS, the Property has undergone a thorough environmental review and was the subject of a hazardous material clean up under the California Department of Toxic Substance Control ("DTSC");

WHEREAS, the Property has been remediated to a condition acceptable to DTSC and has a recorded deed restriction that expressly allows for land uses such as commercial, industrial, parks, and open space;

WHEREAS, the Property is currently zoned for commercial/industrial uses and additional environmental review would be necessary for land uses such as residential, schools or daycare;

WHEREAS, the terms of the proposed transaction are contained in a Letter of Intent to Purchase, attached hereto as Exhibit B; and

WHEREAS, authorizing the City Manager to finalize and execute the Purchase and Sale Agreement ("Agreement") consistent with these terms would expedite the transaction and serve the best interests of the City.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. That the City Council hereby authorizes the City Manager to negotiate and execute a Purchase and Sale Agreement with Bradford Manufacturing Company for the acquisition of the Property for future electric utility use.

3. That the City Council approves the establishment of the Capital Improvement Project 2412 – Reed Street Property for Future Utility Use.

4. That the City Council approves the appropriation of $9,000,000.00 to the Reed Street Property for Future Utility Use Project in the account 591-1377-80200-2412 from Electric operating cash 091-44199.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF MAY, 2014, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST: _____

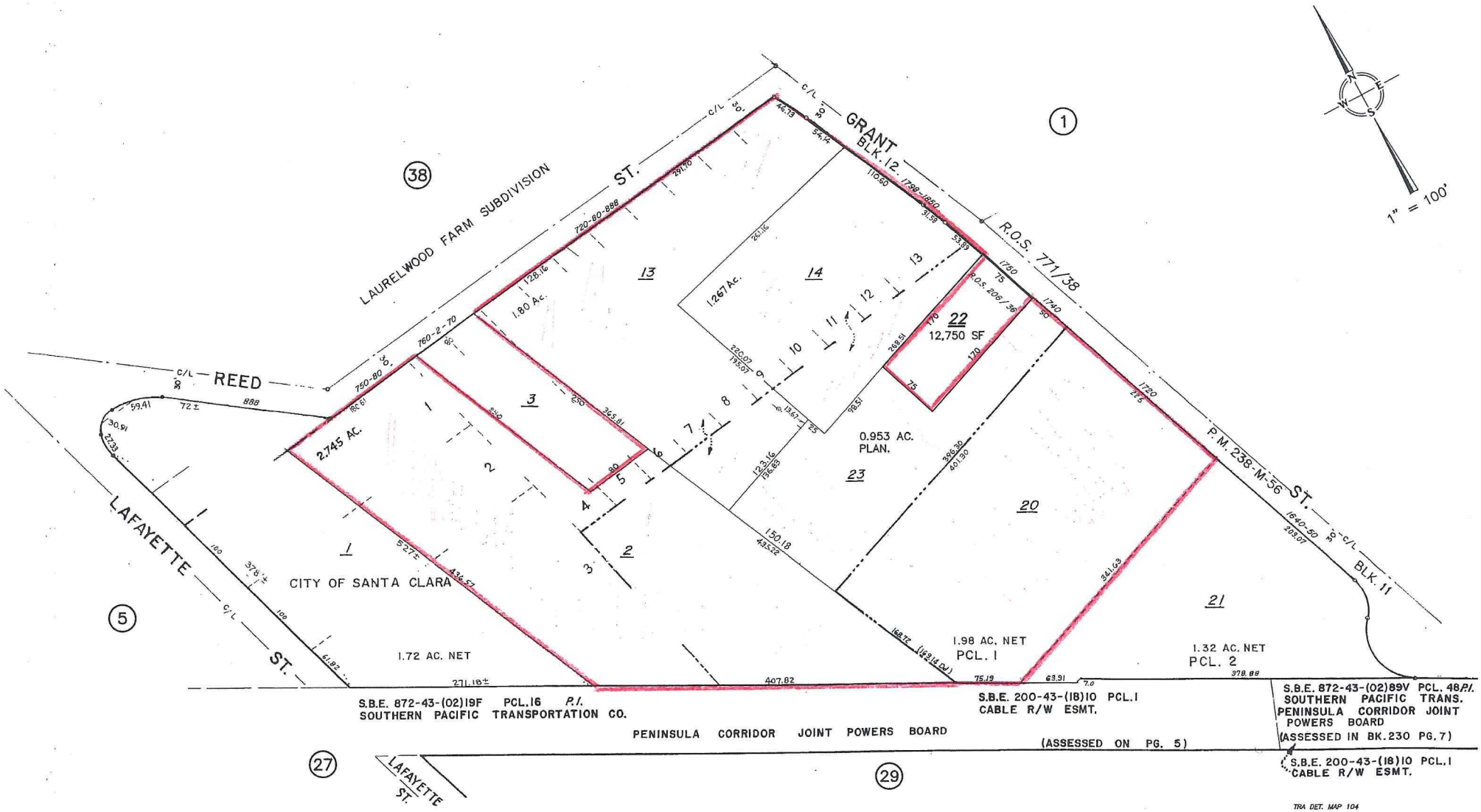
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Exhibit A – Parcel Map and Legal Description
2. Exhibit B – Letter of Intent to Purchase

I:\RESOLUTIONS\Reed Street Authorize CM.doc

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
224	2



TRA DET. MAP 104

LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2013–2014

The land referred to is situated in the County of Santa Clara, City of Santa Clara, State of California, and is described as follows:

PARCEL 1:

Real property in the City of Santa Clara, County of Santa Clara, State of California, comprised of parts of Lots Numbered 1, 2, 3, 4, 5, and 6 in Block 12; and all of Lots Numbered 7, 8, 9, 10, 11, 12, and 13 in Block 12, so designated and delineated on the Map of Laurelwood Farm recorded March 13, 1924 in Volume "S" of Maps, Pages 7 and 8, Santa Clara County Records; and also part of the land of "Town of Santa Clara" situated between Block 11 and Block 12, so designated and delineated on said Map of Laurelwood Farm, described as follows:

Commencing at the point of intersection of the Southern line of Reed Street and the Western line of Grant Street, so designated and delineated on said Map of Laurelwood Farm; thence South 24° 00′ East 224.80 feet and South 20° 09′ East, along said Western line of Grant Street; thence South 69° 51′ West 287.18 feet; thence North 20° 09′ West 35.19 feet; thence North 24° 00′ West 301.90 feet to a point in the Southern line of said Reed Street; thence along said Southern line, North 82° 48′ 30″ East 300 feet to the point of commencement.

So described in the Deed by the City of Santa Clara to San Jose Manufacturers, Incorporated recorded March 10, 1942 in Book 1087, Page 212, Official Records, and subsequently in the Deed by San Jose Manufacturers, Inc. to N.T. Bradford recorded November 13, 1944 in Book 1233, Page 129, Official Records.

EXCEPTING THEREFROM that portion thereof described in the Deed by Bradford Mfg. Co. to the City of Santa Clara for widening Grant Street recorded June 17, 1965 in Book 6998, Page 28, Official Records.

PARCEL 2:

Commencing at a point on said Southern line of Reed Street, distant thereon South 82° 48′ 30″ West 300.00 feet from said Western line of Grant Street; thence along said Southern line of Reed Street, South 82° 48′ 30″ West 128.16 feet; thence South 23° 36′ East 365.81 feet; thence North 69° 51′ East 123.16 feet; thence North 20° 09′ West 35.19 feet; thence North 24° 00′ West 301.90 feet to the point of commencement.

So described in the Deed by the City of Santa Clara to N.T. Bradford recorded July 21, 1943 in Book 1154, Page 66, Official Records.

PARCEL 3:

Commencing at a point on said Southerly line of Reed Street, distant thereon South 82° 48′ 30″ West 428.16 feet from said Western line of Grant Street; thence South 23° 36′ East 685.22 feet, more or less, to the Northeastern boundary line of the strip of land owned by the Southern Pacific Railroad Company, so designated and delineated on said Map of Laurelwood Farm;

thence along said boundary line, North 61° 24′ West 407.82 feet to a point distant 250.00 feet Southwesterly, measured at right angles, from said line bearing South 23° 36′ East; thence North 23° 36′ West 436.57 feet to said Southerly line of Reed Street; thence North 82° 48′ 30″ East along said Southerly line, 260.61 feet to the point of commencement.

So described in the Deed by the City of Santa Clara to Kennametal, Inc. recorded February 13, 1945 in Book 1244, Page 242, Official Records.

EXCEPTING THEREFROM that portion thereof described as follows:

Commencing at a point on said Southerly line of Reed Street, distant thereon South 82° 48′ 30″ West 428.16 feet from said Western line of Grant Street; thence South 23° 36′ East 250.00 feet; thence South 82° 48′ 30″ West, parallel with said Southerly line of Reed Street, 80.00 feet; thence North 23° 36′ West 250.00 feet to a point on said Southerly line; thence North 82° 48′ 30″ East along said Southerly line, 80.00 feet to the point of commencement.

PARCEL 4:

Parcel 1, so designated and delineated on the Parcel Map recorded June 14, 1968 in Book 238 of Maps, Page 56, Official Records.

Said land is part of the parcel of land described in the Deed by the City of Santa Clara to Charles R. Miller recorded January 10, 1946 in Book 1313, Page 484, Official Records.

PARCEL 5:

Commencing at a point on the Westerly line of Grant Street, distant thereon 269.64 feet Southerly from said Southern line of Reed Street, at the Southeasterly corner of the parcel of land described in said Deed by San Jose Manufacturers to N.T. Bradford recorded November 13, 1944; thence along said Westerly line of Grant Street, South 20° 09′ East 25.00 feet to the Northeasterly corner of the parcel of land described in the Deed by the City of Santa Clara to Albert H. Whiteaker et ux recorded May 1, 1946 in Book 1342, Page 358, Official Records; thence along the Northerly boundary line of said Whiteaker parcel of land, South 69° 51′ West 175.00 feet, and continuing along the Westerly boundary line thereof, South 20° 09′ East 75.00 feet; thence South 69° 51′ West 229.30 feet, more or less, to the Easterly boundary line of said parcel of land described in the Deed by the City of Santa Clara to Kennametal, Inc.; thence along said line, North 23° 36′ West 100.18 feet to the Southwesterly corner of the parcel of land described in said Deed by the City of Santa Clara to N.T. Bradford recorded July 21, 1943; thence along the Southerly boundary lines of said N.T. Bradford parcels, North 69° 51′ East 410.34 feet to the point of commencement.

So described in the Deed by the City of Santa Clara to J.J. Burch and Harold E. Orcutt recorded July 8, 1946 in Book 1356, Page 367, Official Records, and subsequently in the Deed by John J. Burch, et al to Bradford Mfg. Co. recorded December 22, 1961 in Book 5408, Page 621, Official Records.

EXCEPTING THEREFROM that portion thereof described in the Deed by Bradford Mfg. Co. to the City of Santa Clara for widening Grant Street recorded June 17, 1965 in Book 6998, Page 32, Official Records.

PARCEL 6:

Commencing at the point of intersection of said Westerly line of Grant Street with the Northwesterly line of the parcel of land described in said Deed by the City of Santa Clara to Charles R. Miller recorded January 10, 1946; thence along said Northwesterly line, South 69° 51′ West 401.30 feet to the Northeasterly line of the parcel of land described in said Deed by the City of Santa Clara to Kennametal, Inc. recorded February 13, 1945; thence along said Northeasterly line, North 23° 36′ West 50 feet, more or less, to the Southernmost corner of the parcel of land described in said Deed by the City of Santa Clara to J.J. Burch and Harold E. Orcutt recorded July 8, 1946; thence along the most Southerly boundary line thereof, North 69° 51′ East 229.30 feet, more or less, to the Southernmost corner of the parcel of land described in said Deed by the City of Santa Clara to Albert H. Whiteaker et ux recorded May 1, 1946; thence along the Southeasterly boundary line thereof, continuing North 69° 51′ East 175 feet to the Southeasterly corner thereof, on said Westerly line of Grant Street; thence along said Westerly line, South 20° 09′ East 50 feet, more or less, to the point of commencement.

EXCEPTING THEREFROM a 5 foot wide strip of said real property, adjoining and abutting said Westerly line of Grant Street.

So described in the Deed by the City of Santa Clara to Bradford Mfg. Co. recorded July 30, 1965 in Book 7052, Page 553, Official Records.

APN: 224-02-002 (Affects Parcel 3)
224-02-013 (Affects Parcel 2 and a portion of Parcel 1)
224-02-014 (Affects portion of Parcel 1 and portion of Parcel 5)
224-02-020 (Affects Parcel 4)
224-02-023 (Affects Parcel 6 and portion of Parcel 5)
ARB: 224-02-002, 224-02-013, 224-02-020, 224-02-011, 224-02-014 and 224-02-015

SANTA CLARA CALIFORNIA

Santa Clara
All-America City
2001

Julio J. Fuentes
City Manager

April 8, 2014

Bob Shepherd, President
Bradford Manufacturing Company
450 W. Santa Clara Street
San Jose, CA 95113
408-282-3855

Re: Letter of Intent to Purchase 8.75 Acres Located on Reed and Grant Streets, Santa Clara, California

Dear Mr. Shepherd,

The following is in response to your letter on behalf of Bradford Manufacturing Company (BMC) dated April 7, 2014. The City of Santa Clara continues to have interest in and is presenting the following revised offer and Letter of Intent to purchase the 8.75 acre property located on Reed and Grant Streets. The purpose of this letter is to outline the terms and conditions upon which BMC ("Seller") would be willing to consider entering into a Purchase and Sale Agreement ("Purchase Agreement"), with City of Santa Clara ("Buyer") whereby Seller would sell and Buyer would purchase that certain real property referenced in Paragraph 1 below. The proposed terms are as follows:

1) **PROPERTY**: The real property consists of approximately 8.75 acres located on Reed and Grant Streets, Santa Clara, CA. Assessor's Parcel Numbers 224-02-002, 224-02-013, 224-02-014, 224-02-020 and 224-02-023.

2) **DEPOSITS**:

   a) Security Deposit: Upon the date of full execution of a Purchase Agreement (the "Effective Date"), Buyer shall deliver to escrow a security deposit in the amount of One Hundred Thousand and No/100 Dollars ($100,000.00), which shall be applied toward to the Purchase Price (defined in Paragraph 3 – Purchase Price).

   b) Additional Deposit: Upon Buyer's release of conditions/contingencies (defined in Paragraph 4), Buyer shall deliver to escrow an additional deposit of One Hundred Thousand and No/100ths Dollars ($100,000.00), which shall be applied toward to the Purchase Price (defined in Paragraph 3 – Purchase Price).

   c) Upon the Buyer's release of conditions/contingencies, both escrow deposits shall become non-refundable, in favor of Seller.

City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 615-2210
FAX (408) 241-6771
www.santaclaraca.gov

3) PURCHASE PRICE: The purchase price for the Property is Eight Million, Five Hundred Thousand and No/100ths Dollars ($8,500,000.00) (the "Purchase Price") and is payable at the close of escrow as follows: All cash to Seller at closing.

4) CONDITIONS: Buyer's obligation to purchase the Property shall be subject to the following conditions:

a) That Buyer and Seller negotiate a signed Purchase Agreement within Fifteen (15) days from a mutually agreed upon Letter of Intent to Purchase. Final execution of a Purchase Agreement is subject to City Council approval.

b) That Seller and Seller's attorney and environmental consultant meet with Buyer and Buyer's Attorney and environmental consultant to resolve any questions or concerns regarding Property's environmental condition.

c) That Seller agrees to request, secure and provide a letter to the Buyer from the California Department of Toxic Substances Control (DTSC) and an independent expert health risk assessment firm indicating beyond the existing public documents available, that the Property is safe for the various potential intended uses including commercial, industrial, parks and open space and such use would pose no increased health risk to the public. TO THE BEST OF SELLERS ABILITY, THE ABOVE WILL BE PROVIDED AFTER 4b ABOVE.

RES INITIAL 4-16-14

d) That Seller agrees to work with Buyer in Buyer's attempt to purchase the two parcels (224-02-022 and 224-02-003) that are surrounded by Seller's land. It is understood that Seller is not obligated to negotiate with the two property owners and Seller makes no representation that the two parcels can be purchased by the Buyer.

e) That Buyer is able to obtain from the owner of the adjoining parcel 224-02-003 a "letter of intent to enter into an agreement stipulating that the City has first right of refusal to purchase the parcel (224-02-003)" or obtain a "letter of intent to enter into a purchase agreement for purchase of the parcel (224-02-003)."

f) That Buyer is able to obtain from the owner of the adjoining parcel 224-02-022 a "letter of intent to enter into an agreement stipulating that the City has first right of refusal to purchase the parcel (224-02-022)" or obtain a "letter of intent to enter into purchase agreement for purchase of the parcel (224-02-022)."

g) That Seller agrees to provide notice to and remove any existing persons, property or encumbrances from the Property that may inhibit immediate use by the Buyer of the entire Property, including leases, storage, equipment, debris, or persons and to secure the property against such further use(s).

5) DUE DILIGENCE PERIOD: The period expiring Forty Five (45) days after the Purchase Agreement (the "Effective Date") for review of title, survey, and other

relevant issues, as well as the approval of Buyer's Board of Directors. The Purchase Agreement will include a provision that with seven (7) days of the Effective Date, Seller must deliver to Buyer, to the extent available to Seller, certain listed books and records, including: (i) the most recent title commitment, report or policy; (ii) the most recent survey; (iii) any reports and correspondence concerning the environmental condition of the Property; (iv) any reports and correspondence concerning the geotechnical and/or soils condition of the Property; (v) the most recent property tax bill issued and proof of payment of last property tax bill; (vi) copies of current utility statements; (vii) copies of any leases, agreements or encumbrances of the Property and notice to leaseholders indicating the certain date of termination prior to close of escrow.

6) CLOSE OF ESCROW: This escrow shall close Fifteen (15) days after the removal of all conditions.

7) DEED RESTRICTION: Buyer is aware that there is a Deed Restriction currently in place.

Initial

8) ENVIRONMENTAL: Seller has completed a cleanup of the Property with oversight from the Department of Toxic and Substance Control (DTSC). The Seller shall provide evidence of a No Further Action (NFA) letter prior to close of escrow.

DTSC from DTSC

9) TITLE INSURANCE: At the close of escrow, Buyer shall be issued a California Land Title Association owner's policy of title insurance in the amount of the Purchase Price from Old Republic Title Company.

10) CLOSING COSTS: Seller shall pay for closing costs and any Broker fees. Buyer shall not pay for any closing costs or Broker commission fees.

11) PRORATIONS: Seller shall be responsible for its share of prorated real property taxes and interest on current assessments as of the date of close of escrow.

12) EXPIRATION DATE: This letter shall be valid through April 23, 2014.

This letter shall not constitute a formal and binding agreement. This letter reflects our present understanding of the discussions and negotiations we have had regarding the terms and conditions of the proposed transaction, and we expect that the definitive Purchase Agreement which is negotiated between us with respect to this transaction will be generally consistent with this letter. This letter shall not, however, create any legal rights or obligations between us. It is intended that all legal rights and obligations of each of us shall then only be those which are set forth in the definitive Purchase Agreement, which shall be contingent upon express approval by the Santa Clara City Council.

///

Should the foregoing meet with your approval, please execute the copy of this letter enclosed herewith and return it to us no later than the date referenced in paragraph 12 above.

Sincerely,

BUYER: **CITY OF SANTA CLARA, CALIFORNIA,**
a chartered California municipal corporation

4/9/14
Date

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

ACCEPTED BY SELLER: Bradford Manufacturing Company, Inc.

4/16/14
Date

BOB SHEPHERD
President
Bradford Manufacturing Company

CC. BMC Board of Directors
Steve Zamudio, Colliers International
Dave Evans, Colliers International

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 13E

Santa Clara All-America City 2001

Date: May 9, 2014

To: City Manager for Council Action

From: Director of Electric Utility
Director of Finance/Assistant City Manager

Subject: Adoption of a Resolution Authorizing Execution and Delivery of a Loan Agreement with Banc of America Preferred Funding Corporation for the Phase Shifting Transformer Project and other Electric Activities

EXECUTIVE SUMMARY:

Presented for Council review and approval is a Resolution authorizing execution of a tax exempt multiple draw term loan agreement with Banc of America Preferred Funding Corporation ("Bank") to finance the Phase Shifting Transformer project and the acquisition of land for future electric use. The Phase Shifting Transformer project will reduce overall transmission costs for the City, the savings of which will be used to repay this loan.

On January 28, 2014, Council approved Resolution 14-8109, which allows the City to reimburse itself for expenditures, not to exceed $22 million, for the Phase Shifting Transformer project that occurred prior to this financing. This Resolution increases the reimbursement to an amount not to exceed $34 million, to include reimbursement for expenditures related to the land acquisition in addition to the Phase Shifting Transformer project. The City Manager executed the term sheet with Banc of America Preferred Funding Corporation on March 28, 2014, which summarized the general terms and conditions of this agreement (attached).

The loan will be used to 1) acquire, construct, integrate, and equip the Phase-Shifting Transformer into the City's electric system ($21.8 million); 2) finance the acquisition of property for future utility use ($8.5 million); and 3) increase the loan amount to reflect the capitalization of interest for up to two years and associated transaction costs (up to $1.7 million). The loan is structured such that repayment of principal and interest will start when the Phase Shifting Transformer is operational, with the cost savings from reduced transmission charges used to repay the loan. This loan is subordinate to the existing electric revenue bonds issued by the City.

The Authorizing Resolution authorizes the issuance of this loan in a principal amount not to exceed $34 million and with a final maturity not later than July 1, 2024. The interest rate will be determined two days before closing, which is estimated to occur on June 12, 2014. The indicative tax-exempt rate as of May 7, 2014 was 2.89% and is expected to be in this general range in June.

Silicon Valley Power issued a Request for Proposal (RFP) in October 2013 requesting offers from financial institutions for financing the Phase Shifting Transformer project. Proposals were received from six lending institutions. The proposal received from Banc of America was selected as it met all of the preferences stated in the RFP and had the best net present value.

The form of documents related to this loan to be authorized and approved by the Resolution includes the Loan Agreement between Banc of America Preferred Funding Corporation and the City of Santa Clara, presented in substantial form. The agreement has been carefully reviewed and negotiated with SVP's financial advisor (Public Financial Management), the City's bond counsel (Norton Rose Fulbright), the City Attorney's Office, and Electric and Finance Department staff. These documents can be viewed on the City's website or are available in the City Clerk's Office for review during normal business hours.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

The loan is a tax-exempt multiple draw term loan, allowing SVP to draw funds corresponding to the need for the funds. The first draw will occur on June 16, 2014 for approximately $24.3 million, which includes $15.8 million for the Phase Shifting Transformer engineering, equipment purchase, and initial construction activities and $8.5 million for the land purchase. The second draw will occur in April 2015 for $6 million to cover the construction and commissioning of the Phase Shifting Transformer. The loan terms allow the City to capitalize the interest for up to two years so that no payments are due until July 1, 2016. As the installation of the Phase Shifting Transformer is expected in December 2015, this allows the loan repayment schedule to coincide with the cost savings from this installation, thereby avoiding any impact to the electric utility's bottom line.

ECONOMIC/FISCAL IMPACT:

The projected payback for the phase shifting transformer is 5 years.

RECOMMENDATION:

That Council adopt a Resolution authorizing the execution and delivery of the Loan Agreement between Banc of America Preferred Funding Corporation and The City of Santa Clara for the financing of the Phase Shifting Transformer Project and other related expenditures, and authorize the City Manager to execute all necessary documents, in substantially similar form as presented, subject to final review by the City Attorney, to complete the transaction.

John C. Roukema
Director of Electric Utility

Gary Ameling
Director of Finance/Assistant City Manager

APPROVED:

Sheila A. Tucker
for Julio J. Fuentes
City Manager

Attachments:

1) ***Authorizing Resolution***
2) ***Executed Term Sheet with Banc of America Preferred Funding Corporation***
3) ***Loan Agreement with Banc of America Preferred Funding Corporation***

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH BANC OF AMERICA PREFERRED FUNDING CORPORATION AND THE BORROWING THEREUNDER IN AN AMOUNT NOT TO EXCEED $34 MILLION AGGREGATE PRINCIPAL AMOUNT PAYABLE FROM AVAILABLE ELECTRIC REVENUES; DECLARING THE CITY'S INTENTION TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AS FOLLOWS:

WHEREAS, the City is a duly constituted charter city of the State of California authorized to exercise the powers granted by its Charter; and

WHEREAS, pursuant to Section 1321(e) of the City's Charter and Resolution No. 4796 entitled "A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Electric Utility Revenue Bonds" adopted on May 8, 1984, as amended by Resolution No. 4804, adopted on May 29, 1984, and as amended by Resolution No. 7313, adopted on April 25, 2006, and Resolution No. 4934 entitled "A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Refunding Electric Utility Revenue Bonds" adopted on April 30, 1985, as amended by Resolution No. 4966, adopted on July 9, 1985, as supplemented by Resolution No. 4967, adopted on July 9, 1985, and as amended by Resolution No. 7314, adopted on April 25, 2006, each of which includes any supplemental procedural resolution adopted pursuant thereto (collectively, the "Procedural Resolution"), the City is authorized to issue revenue bonds for the purpose of financing the generation, production, transmission and distribution of electric energy, including the acquisition and/or construction of land and facilities therefore; and

WHEREAS, on January 28, 2014, the City duly adopted Resolution No. 14-8109, declaring its intent to reimburse certain expenditures from the proceeds of obligations, including in the form of a tax-exempt term loan or line of credit from a financial institution, anticipated to be incurred for the purpose of financing the costs of acquisition of certain real property and/or the acquisition, construction, integration and equipping of a phase-shifting transformer and related improvements to its electric system; and

WHEREAS, there has been presented to this meeting a term loan facility in the form of a Loan Agreement (the "Loan Agreement") between the City and Banc of America Preferred Funding Corporation (the "Bank"), providing for the Bank to make a term loan to the City payable from and secured by net revenues of the City's electric system for any period remaining after payment of all amounts required to be paid under and as provided for in the City's Amended and Restated Electric Revenue Bond Indenture, dated as of March 1, 2011 (the "Indenture") securing the payment of Electric Revenue Bonds and Parity Debt of the City (as such terms are defined in the Indenture), for principal, interest, reserve fund and any other debt service or other requirements on the Electric Revenue Bonds and any Parity Debt as the same shall become due (as more fully described in said Loan Agreement, the "Available Electric Revenues"); and

WHEREAS, the principal and interest payable by the City under such Loan Agreement will be evidenced by a subordinated electric revenue bond of the City (the "Bond") in substantially the form attached to the Loan Agreement; and

WHEREAS, the Bond shall constitute an electric revenue bond of the City for all purposes under Section 1320 and 1321(e) of the City Charter and the Procedural Ordinance; and

WHEREAS, the City Council has reviewed all proceedings previously taken relative to the transactions contemplated by the foregoing, and has found as a result of such review, and hereby determines and declares that all conditions, things and acts required by law to exist, happen or be performed precedent to the transactions contemplated by the foregoing do exist, and were performed in due time, form and manner as required by law, and the City Council is now authorized to undertake the transactions contemplated by the foregoing.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. Approval of Loan Agreement. The City Manager of the City (the "City Manager") or any duly authorized designee thereof is hereby authorized and directed to execute for and on behalf of the City, and the City Clerk shall attest thereto, the Loan Agreement, in substantially the form submitted to this meeting, with such changes therein and additions thereto as the City Manager or the Director of Finance of the City (the "Director of Finance") shall approve after consultation with the City Attorney of the City (the "City Attorney") and Fulbright & Jaworski LLP, a member of Norton Rose Fulbright, the City's Bond Counsel ("Bond Counsel"), such approval to be evidenced by the execution and delivery thereof. The Loan Agreement, as executed and delivered, is hereinafter referred to as the "Loan Agreement" and such Loan Agreement is hereby approved.

2. Authorization and Approval of Bond. The proposed form of the Bond, as set forth in such Loan Agreement, is hereby approved and the City Manager of the City is hereby authorized and directed to execute for and on behalf of the City, the Bond in substantially such form and the City Clerk of the City (the "City Clerk") is authorized and directed to attest thereto. The Director of Finance of the City, in his official capacity and not personally, is hereby authorized and directed to serve as fiscal agent and paying agent for the Bond, to authenticate and deliver the Bond in registered form to the Bank in accordance with the Loan Agreement, and to maintain such books and records as appropriate of the registry thereof. The issuance and delivery of the Bond and the borrowing under the Loan Agreement evidenced thereby is hereby authorized, approved and provided for by this resolution in an aggregate principal amount not to exceed $32,000,000 for the purpose of financing certain expenditures made and to be made in the payment of the costs of certain addition to, and improvements of the electric system of the City and the acquisition of land therefor (as more fully defined as the "Project" in Section 3 of this resolution); provided, however, that (i) the final maturity of the Bond and any borrowing under the Loan Agreement evidenced thereby shall be not later than July 1, 2024, (ii) the maximum Tax-Exempt Rate (as defined in the Loan Agreement) shall not exceed 4% percent per annum and the Maximum Rate (as defined in the Loan Agreement) payable thereunder shall not exceed 12.00% per annum, and (iii) no original issue discount shall be applicable. Interest payable with

respect to the Bond and the borrowing under the Loan Agreement evidenced thereby shall be payable on January 1 and July 1 of each year. The Bond evidencing the payment obligations of the City under the Loan Agreement shall be a subordinate revenue bond of the City's electric utility Enterprise as such term is defined in the herein-referenced Indenture and, as provided in the Procedural Resolution, such definition shall constitute the definition of the "Enterprise" for purposes of this resolution. The Bond and the payment obligations of the City under the Loan Agreement evidenced thereby are special, limited obligations of the City and are payable as to both principal of and interest from, and shall be secured by a pledge of Available Electric Revenues and the City shall not be required to advance money from any other source other than Available Electric Revenues as and to the extent provided in the Loan Agreement, which pledge of Available Electric Revenues is hereby approved. The general fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the Bonds or the payment obligations of the City under the Loan Agreement evidenced thereby.

3. Intent to Reimburse City from Bond Proceeds. Pursuant to Resolution No. 14-8109, the City has previously declared its intent to reimburse certain expenditures for the electric system improvements identified therein in a maximum principal amount not expected to exceed $22,000,000 from the proceeds of a tax-exempt financing, such as the borrowing under the Loan Agreement and the Bonds, or other obligations. The City has subsequently determined that the expenditures (the "Reimbursable Expenditures") for which the City desires reimbursement will include expenditures for any or all of the following electric system improvements (regardless of whether such improvements were described in Resolution No. 14-8109): (i) the acquisition of certain real property proposed to be purchased for future Electric System use, described as 780 Reed Street including APN 224-02-002, 224-02-013, 224-02-014, 224-02-020 and 224-02-023 (ii) the acquisition, construction, integration and equipping of a phase-shifting transformer and related improvements to its electric system and/or (iii) other capital projects related to the electric system, including substation improvements, gas turbine overhauls and improvements, expansions of the fiber optic system and installation of advanced meter infrastructure, such other capital projects as more fully described in the City's electric system capital improvement program budget for Fiscal Year 2014-15 (collectively, the "Project"). Accordingly, the City hereby reaffirms its intent as declared in Resolution No. 14-8109 (with regard to the facilities described therein), and declares its reasonable official intent to issue or incur obligations in a maximum

principal amount which is not expected to exceed $34,000,000, and to apply a portion of the proceeds thereof to the reimbursement of the City for the prior payment of Reimbursable Expenditures for the Project. The City recognizes that under section 1.150-2 of the Treasury Regulations, the allocation of proceeds of the financing to a Reimbursable Expenditure (other than to certain *de minimis* expenditures or preliminary expenditures described in section 1.150-2(f) of the Treasury Regulations) will be recognized only if (i) that Reimbursable Expenditure was paid not earlier than 60 days prior to the adoption of Resolution No. 14-8109 (to the extent described therein) or of this resolution and (ii) the allocation of proceeds of the financing to such reimbursement is made not later than the later of (a) 18 months after the date of payment of the Reimbursable Expenditure or (b) 18 months after the date upon which the Project is placed in service or abandoned, but in no event more than three years after the date of payment of the Reimbursable Expenditure.

4. Additional Actions. The City Manager, the Director of Finance, the Assistant Director of Finance, the Director of Electric Utility, the City Clerk and any and all other officers of the City are hereby authorized and directed, individually and collectively, to do any and all things and to take all actions, including the execution and delivery of all assignments, certificates (including, without limitation, a tax certificate), requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents as may be necessary, convenient or advisable in order to consummate the transactions contemplated by the Loan Agreement, the Bond and this resolution. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

[Remainder of Page Intentionally Left Blank]

9. Constitutionality, Severability. If any section, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City Council of the City of Santa Clara hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

10. Effective Date. That this resolution shall take effect immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF DULY HELD ON THE 20th DAY OF MAY, 2014, BY THE FOLLOWING VOTES:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ATTEST:_____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Loan Agreement

City of Santa Clara, CA

Silicon Valley Power ElectricName

Proposal for a Tax-Exempt Loan

March 4, 2014

Summary of Terms and Condition

Submission date: March 4, 2014

Parties to the Transaction

Borrower: City of Santa Clara, CA - Electric Utility Enterprise Fund (Silicon Valley Power) (the "Borrower").

Lender: Banc of America Preferred Funding Corporation (the "Lender" or "Bank").

General Terms

Description: Tax-Exempt Multiple Draw Term Loan (the "Loan" or "Facility").

Amount: $31,800,000 ("Principal Amount"). Borrower may capitalize interest for up to two years. If the Borrower so elects, the Principal Amount shall be increased to include the capitalized interest.

Expected Closing: Estimated at June 12, 2014 ("Closing")

Funding Dates; Funding Amounts: The Loan shall be funded on the following dates and in the following amounts ('Funding"):

June 16, 2014	$25,800,000
April 15, 2015	$6,000,000

(note: above payment dates and amounts are estimates to be finalized prior to closing)

Maturity Date: June 12, 2024 ("Maturity Date")

Indicative Tax-Exempt Rate: The indicative Tax-Exempt Rate as of February 27, 2014, is 2.56%. (Indicative rate with a par call at year 5 is 2.69%)

The actual Tax-Exempt Rate will be determined (2) two business days prior to Closing of the Facility.

Default Rate: 12%

Repayment: Interest on the Facility will accrue from and including each Funding Date through and including the Maturity Date. Interest on the Facility will be payable semiannually on January 1 and July1 of each calendar year, commencing January 1, 2015. Principal will be payable annually on July 1 each year, beginning July 1, 2016. The principal payments will be structured to produce level annual payments of principal and interest.

Liquidated Damages for Prepayment: A liquidated damages fee ("Liquidated Damage Fee") will be calculated in accordance with Exhibit A:

- If the Loan fails to fund on any Funding Date (other than as a result of a default by the Bank); or
- If the Facility is prepaid in whole or in part (exclusive of scheduled amortization) prior to the Maturity Date, provided; however, if par call

option is selected, Liquidated Damages shall not occur after effective date of any such par call.

Source of Payment and Security

Use of Proceeds:	To fund the acquisition and integration of a phase-shifting transformer, or for other lawful purposes of the Borrower and subject to any applicable tax laws.
Security:	The Facility will be secured by a subordinate lien of Adjusted Net Revenues of the Borrower. Adjusted Net Revenues as defined in the Amended and Restated Electric Revenue Bond Indenture dated March 1, 2011 (the "Indenture").
Lien Priority:	Subordinate to all Bonds issued under the Indenture and all Parity Debt described in the Indenture.

Calculation and Payment of Interest

Day Count:	Interest on the Facility will be calculated on the basis of twelve 30 day months and a 360 day year.
Interest Payments:	Interest on the Facility will be payable semiannually, accruing from the Funding Date and initially payable on January 1, 2015.
Determination of Taxability:	Upon a Determination of Taxability with respect to the Facility, the Facility will bear interest from the Funding Date or the date that taxability commences at a rate equal to the product of the tax-exempt rate of interest otherwise in effect and the Taxable Rate Factor (currently 1.54). The Taxable Rate Factor is the amount by which the tax-exempt rate must be multiplied to achieve the equivalent taxable rate given the highest marginal federal corporate tax rate, currently 35%. The Taxable Rate Factor is subject to change should the highest marginal federal corporate tax rate change. The Borrower is also responsible for payment of any interest, penalties or charges owed by the Lender as a result of interest on the Facility that accrues from and after the Funding Date becoming includable in the gross income of the Lender, together with any and all attorneys' fees, court costs, or other out-of-pocket costs incurred by the Lender in connection therewith. A change in the interest rate due to this provision will NOT trigger an exception to the prepayment penalty provision.

Closing Fees and Expenses

Expenses:	The Borrower will be responsible for all costs and expenses relating to the Facility, including fees and disbursements of Lender's counsel, Borrower counsel, and the Borrower's financial advisor and any other expenses incidental to the transaction contemplated by the Facility or this term sheet.
Lender's Counsel:	Estimated legal fees at $40,000, plus disbursements/out-of-pocket expenses.

Administrative Fees:	Amendments, waivers or consents: minimum of $3,500, plus all counsel fees and expenses.
Fees and Expenses Valid through June 16, 2014:	All fees and expenses, including those of the Lender's Counsel, are subject to increase if the transaction is not closed by June 16, 2014 (provided the Lender has received the mandate from the Borrower as evidenced by receipt of signed term sheet as described below)

The Loan Agreement

Loan Agreement:	At Closing, the Borrower and the Lender will enter into a loan or credit agreement (the "Agreement") pursuant to which the Lender will agree to lend the Principal Amount (the "Loan") to the Borrower on the terms and conditions described herein, including the conditions to funding on each Funding Date, in addition to other customary terms and conditions. The Borrower's obligations under the Agreement shall be evidenced by a Bond or a Note.
Transfers:	While the Bank is making the Loan under the Facility for its own account without a current intent to transfer or assign the same, the Bank reserves the right in its sole discretion, to assign, sell, pledge or participate interests in the Loan without the consent of the Borrower. The Bank will agree not to transfer or assign its obligations under the Facility until the Loan is fully funded.
Conditions Precedent to Closing:	The Agreement will contain conditions to effectiveness, including: (i) the negotiation, execution and delivery of definitive documentation in form and substance satisfactory to the Bank, (ii) delivery to the Bank in form and substance satisfactory to the Bank of a standard approving opinion of bond counsel regarding validity and legality of, security for the Agreement and the Loan, an opinion of Borrower's counsel in customary form, and certificates of the official of the Borrower as to certain factual matters regarding the Agreement and the Loan, (iii) receipt of satisfactory financial information, budgets, projections, etc. as requested by the Bank, (iv) a bring down of representations and warranties, receipt of statement as to compliance with covenants and absence of Event of Default and any other event that, with the passage of time, the giving of notice, or both, could reasonably be expected to result in an Event of Default, (v) there being no event or condition that has had or could be reasonably expected, either individually or in the aggregate, to have a Material Adverse Effect and (vi) such other conditions precedent as are customary for a financing of the type contemplated. Material Adverse Events shall be defined to be consistent with Borrower's Reimbursement Agreement relating to the 2008B Bonds.
Conditions Precedent to Each Funding:	(i) Continued accuracy of representations and warranties; and (ii) absence of Event of Default or any other event that, with the passage of time, the giving of notice, or both, would result in an Event of Default
Conditions Precedent to Funding at the Tax Exempt Rate:	Conditions to the funding the Loan will include without limitation, as deemed necessary in the sole discretion of the Bank to permit the Tax-Exempt Rate, delivery of an unqualified opinion of a nationally recognized bond counsel that interest on the Bond will be excludable from gross income for federal income tax purposes from and after the Funding Date and evidence of the filing of an IRS Form 8038.
Borrower's	Usual and customary for transactions of this type including, without limitation, the

Representations and Warranties: following: (i) legal existence, qualification and power; (ii) due authorization and no contravention of law, contracts or organizational documents; (iii) governmental and third party approvals and consents; (iv) enforceability; (v) accuracy and completeness of specified financial statements and no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; (vi) no material litigation; (vii) no default or inchoate default; (viii) ownership of property; (ix) insurance matters; (x) environmental matters; (xi) tax matters; (xii) ERISA compliance (if applicable); (xiii) use of proceeds and not engaging in business of purchasing/carrying margin stock; (xv) accuracy of disclosure; (xvi) no sovereign immunity; (xvii) compliance with laws; (xviii) validity and priority of lien supporting the Facility; (xix) bankruptcy and insolvency; and (xx) such other representation and warranties are customary for a transaction of this type.

Covenants: Usual and customary for transactions of this type, including, without limitation, the following:(i) timely delivery of audited financial statements, forecasts, regulatory filings, compliance certificates and other information, (ii) notices of default, material litigation, material governmental proceedings or investigations, ERISA (if applicable) and environmental proceedings and material changes in accounting or financial reporting practices; (iii) payment of obligations; (iv) preservation of existence; (v) maintenance of properties and insurance; (vi) compliance with laws; (vii) maintenance of books and records; (viii) inspection rights; (ix) use of proceeds; (x) Preferential Repayment covenant shall be similar to that contained in the Borrower's Reimbursement Agreement in connection with the 2008B Bonds. (xi) waiver of sovereign immunity; and (xii) incorporation of all covenants in the Indenture.

Financial Covenants: Rate Covenant:
The City will at all times, fix, prescribe and collect rate, fees and charges in connection with the services and facilities provided by the Electric Utility so as to yield Revenues in each Fiscal Year sufficient so that Adjusted Net Revenues for such year shall be at least 1.0x the amount of Debt Service on all debt for such Fiscal Year, including, without limitation, the Loan.

Reporting Requirements: The Borrower shall provide the following financial information and statements in timing, form and content acceptable to the Bank including the complete audited financial statements of the Borrower; the Borrower's Board-authorized budget for the next fiscal year; a certificate of an authorized representative of the Borrower stating whether there exists on the date of such certificate any Default or Event of Default and if so, the details thereof and the action which the Borrower is taking or proposes to take with respect thereto, and such other information respecting the affairs, condition and/or operations, financial or otherwise, of the Borrower as the Bank may from time to time reasonably request. Financial reporting requirements shall be defined to be consistent the Borrower's Reimbursement Agreement in connection with the 2008B Bonds

Events of Default: Usual and customary in transactions of this type, including the following: (i) nonpayment of principal or interest or other amounts under the Facility; (ii) failure to perform or observe covenants set forth in the loan documentation; (iii) any representation or warranty proving to have been incorrect when made or confirmed; (iv) cross-default to other indebtedness; (v) voluntary or involuntary bankruptcy, insolvency, debt moratorium, etc.; (vi) inability to pay debts; (vii) monetary

judgment defaults in an amount to be agreed and material non-monetary judgment defaults; (viii) actual or asserted invalidity or impairment of any loan documentation; and (ix) downgrade any Electric Revenue Bonds below Baa2, BBB or BBB (or the equivalent) by Moody's, S&P or Fitch, respectively.

Remedies: The Default Rate will apply to all outstanding obligations of the Borrower to the Bank following an Event of Default and the Bank may declare the Loan and all other amounts payable with respect to the Facility to be immediately due and payable (subject to the rights of holders of the Bonds and Parity Debt under the Indenture), and may exercise its right of setoff and any other rights or remedies available to it under the loan documentation, at law or in equity.

Other Standard Terms

Prepayment: Optional prepayments and breakage and redeployment costs are subject to the Liquidated Damage Fee described in Exhibit A.

Clawback: The Facility will include customary interest rate recapture ("clawback") language allowing the Bank to recover interest in excess of any maximum interest rate imposed by law.

Indemnification: The Borrower will indemnify and hold harmless the Bank and its respective affiliates and its partners, directors, officers, employees, agents and advisors from and against all losses, claims, damages, liabilities and expenses arising out of or relating to the transactions contemplated by the Loan Agreement, the Borrower's use of loan proceeds or the commitment including, but not limited to, reasonable attorneys' fees (including the allocated cost of internal counsel) and settlement costs (excluding acts of gross negligence or willful misconduct of an indemnified party as determined by a court of competent jurisdiction). This indemnification shall survive and continue for the benefit of all such persons or entities.

Choice of Law / Jury Trial / Venue

Governing Law: This proposed Summary of Terms and Conditions and any documents to which the Bank shall become a party shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York; provided that the duties and obligations of the Borrower under any such document shall be governed by, and construed and interpreted in accordance with, the laws of the Borrower's jurisdiction.

Jury Trial: The Borrower agrees, to the extent permitted under applicable law, to waive any right to a trial by jury in any action or proceeding with respect to any dispute or controversy under the Loan Documents.

If such waiver is not enforceable, the Borrower will agree judicial reference under Section 638 of the California Code of Civil Procedure.

Venue: Any disputes or legal actions arising out of this transaction shall be brought in the courts of California, and each party, to the fullest extent permitted by law, shall consent to the jurisdiction of such courts.

Contacts

Bank of America, N.A. (The Bank):

Name:	Nancy Nuerenberg
Title:	Senior Vice President
Address:	800 5th Avenue Seattle, WA 98104
Telephone:	(206) 358-6279
Facsimile:	(206) 300-6073
email:	nancy.d.nuerenberg@baml.com

Lender's Counsel: McGuire Woods LLP

Name:	Neil W. Rust
Address:	800 Century Park East, 8th Floor Los Angeles, CA 90067
Telephone:	(310) 315-8240
Facsimile:	(312) 956-1409
email:	nrust@mcguirewoods.com

Proposed Terms and Conditions Subject to Certain Events

This Summary of Terms is intended only as an outline of certain of the material terms of the Facility and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in definitive documentation for the Facility contemplated hereby. This Summary of Terms is a commitment, subject to:

Absence of any material adverse change in the financial condition, operations or prospects of the Borrower, or in any law, rule or regulation (or their interpretation or administration), that, in each case, may adversely affect the consummation of the transaction, to be determined in the sole discretion of the Bank,

Agreement as to all final terms and conditions and satisfactory documentation thereof (including satisfactory legal opinions).

Expiration of Terms and Conditions: Consideration of a financing based on the terms and conditions presented in this term sheet shall automatically expire in 30 calendar days from the date hereof, if not accepted as evidenced by receipt of a signed term sheet.

The Bank reserves the right to terminate, reduce or otherwise amend its commitment if subsequent to the receipt of a singed term sheet, the subject transaction is not closed by June 16, 2014,

Future Modifications: The terms, conditions, pricing levels and fees (including legal fees and expenses) cited herein reference the financing and the Facility Amount as described in this Summary of Terms and Conditions and are subject to revision in the event that (i) the Facility Amount changes, (ii) the security or transaction structure is modified, (iii) the transaction deviates materially from what was initially described, or (iv) the proposed financing does not close by June 16, 2014.

Confidentiality

This Summary of Terms and Conditions contains confidential and proprietary structuring and pricing information. Except for disclosure on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the Facility or as may be required by law, the contents of this Summary of Terms and Conditions may not be disclosed in whole or in part to any other person or entity without our prior written consent, provided that nothing herein shall restrict disclosure of information relating to the tax structure or tax treatment of the proposed transaction.

No Advisory or Fiduciary Role

The Borrower acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between the Borrower and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Borrower; (ii) the Bank has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank has provided other services or is currently providing other services to the Borrower on other matters); (iii) the only obligations the Bank has to the Borrower with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (iv) the Borrower has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Agreement by the Borrower

The Borrower hereby agrees to engage the Bank as Lender pursuant to the terms and conditions stated herein.

Please evidence your agreement with the foregoing by signing and returning a copy of this document to the Bank.

AGREED TO:

CITY OF SANTA CLARA, CA

By: _____ Date: 3/28/14

Its: CITY MANAGER

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE

_____

Exhibit A

The Loan may be prepaid in whole, or in part, on any date, with three (3) days prior written notice to the Lender by payment in an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus the Liquidated Damage Fee. If for any reason (other than a default by the Bank), the Loan fails to fund on any Funding Date, the Borrower shall pay the Bank a Liquidated Damage fee.

For purposes hereof, the Liquidated Damage Fee will be the sum of fees calculated separately for each Prepaid Installment or unfunded Funding Amounts, as follows:

The Bank will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding or the Funding Amount, as the case may be, until the applicable Original Payment Date, using the interest rate applicable to the Loan.

The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment or Funding Amount, as the case may be, if it were reinvested from the date of prepayment or draw down, as the case may be, through the Original Payment Date, using the Treasury Rate.

If (i) minus (ii) for the Prepaid Installment or Funding Amount, as the case may be, is greater than zero, the Bank will discount the monthly differences to the date of prepayment or draw down, as the case may be, by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment or Funding Amount, as the case may be.

The following definitions will apply to the calculation of the Liquidated Damage Fee:

"Original Payment Dates" mean the dates on which the prepaid or drawn down principal would have been paid if there had been no prepayment or failure to fund, as the case may be.

"Prepaid Installment" means the amount of the prepaid principal which would have been paid on a single Original Payment Date.

If (i) minus (ii) for the Prepaid Installment or Funding Amount, as the case may be, is greater than zero, the Bank will discount the monthly differences to the date of prepayment or failure to fund, as the case may be, by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment or Funding Amount, as the case may be.

"Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: interest rate on the Facility divided by the difference of (1 minus the Maximum Corporate Income Tax Rate). The "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to U.S. corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

"Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment or Funding

Amount, as the case may be (calculated as of the date of prepayment in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Lender shall select a comparable publication to determine the Treasury Rate.

[McGuireWoods Draft: 4/30/2014]

LOAN AGREEMENT

Between

BANC OF AMERICA PREFERRED FUNDING CORPORATION

And

THE CITY OF SANTA CLARA

Dated as of June [●], 2014

LOAN AGREEMENT
(This Table of Contents is not a part of this Loan Agreement and is only for convenience of reference)

TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE ONE	DEFINITIONS	2
Section 1.1	Definitions	2
Section 1.2	Incorporation of Certain Definitions by Reference	8
Section 1.3	Computation of Time Periods	8
Section 1.4	Construction	8
Section 1.5	Accounting Matters	9
Section 1.6	Times	9
ARTICLE TWO	LOANS	9
Section 2.1	Loans	9
Section 2.2	Interest	9
Section 2.3	Determination of Taxability	10
Section 2.4	Repayment	10
Section 2.5	Prepayment	10
Section 2.6	Bonds	11
Section 2.7	Method of Payment; Etc	11
Section 2.8	Payment Due on Non-Business Day to Be Made on Next Business Day	11
Section 2.9	Late Payments	11
Section 2.10	Maximum Rate; Payment of Fee	11
Section 2.11	Security	12
ARTICLE THREE	CONDITIONS PRECEDENT	12
Section 3.1	Conditions Precedent to Effectiveness	12
Section 3.2	Conditions Precedent to Making of Loans	14
ARTICLE FOUR	REPRESENTATIONS AND WARRANTIES	14
Section 4.1	Organization, Powers, Etc	15
Section 4.2	Authorization, No Contravention	15
Section 4.3	Binding Effect	15
Section 4.4	Financial Information	15
Section 4.5	Litigation	16
Section 4.6	Employee Benefit Plans, Etc	16
Section 4.7	Environmental Laws	16
Section 4.8	No Sovereign Immunity	16
Section 4.9	Disclosure	16

TABLE OF CONTENTS
(continued)

Page

Section 4.10	Status of Obligations	16
Section 4.11	Incorporated Representations	17
Section 4.12	Pending Legislation	17
Section 4.13	Compliance	17
Section 4.14	Default	17
Section 4.15	Margin Stock	17
Section 4.16	Tax Exempt Status	17
Section 4.18	Solvency	18
Section 4.19	Sanctions	18
ARTICLE FIVE	COVENANTS	18
Section 5.1	Reporting Requirements	18
Section 5.2	Notices	19
Section 5.3	Further Assurances	20
Section 5.4	Inspection of Property, Books and Record	20
Section 5.5	Waiver of Immunity	20
Section 5.6	Compliance with Laws; Compliance with Agreements	20
Section 5.7	Disclosure to Assignees and Participants	20
Section 5.8	Incorporation of Covenants	20
Section 5.9	Maintenance of Tax-Exempt Status of the Loans	21
Section 5.10	Insurance Requirements	21
Section 5.11	Rates and Charges	21
Section 5.12	Liens; Indebtedness; Swaps; Consolidation and Mergers	21
Section 5.13	Use of Proceeds; Federal Reserve Regulations	22
Section 5.14	Accounting Changes	22
Section 5.15	Maintenance of Enterprise Property	22
Section 5.16	Preferential Repayment	23
Section 5.17	Filing of the Agreement	23
ARTICLE SIX	DEFAULTS	23
Section 6.1	Events of Default and Remedies	23
Section 6.2	Remedies	25
ARTICLE SEVEN	MISCELLANEOUS	26
Section 7.1	Net of Taxes, Etc	26
Section 7.2	Set Off	27
Section 7.3	Liability of Bank	27
Section 7.4	Unconditional Obligations	27
Section 7.5	Assignees; Participants	28
Section 7.6	Survival of this Agreement	28
Section 7.7	Modification of this Agreement	29
Section 7.8	Waiver of Rights by the Bank	29

TABLE OF CONTENTS
(continued)

Page

Section 7.9	Severability	29
Section 7.10	Governing Law	29
Section 7.11	Notices	29
Section 7.12	Successors and Assigns	30
Section 7.13	Costs and Expenses; Reimbursement	30
Section 7.14	Headings	31
Section 7.15	Counterparts	31
Section 7.16	Entire Agreement	31
Section 7.17	Submission to Jurisdiction; Waiver of Jury Trial	31
Section 7.18	USA PATRIOT Act Notice	32
Section 7.19	Assignment to Federal Reserve Bank	32

Exhibit A – Form of Bond

This LOAN AGREEMENT, dated as of June [●], 2014, is entered into between the CITY OF SANTA CLARA, a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State of California (the "City"), and BANC OF AMERICA PREFERRED FUNDING CORPORATION, a Delaware corporation (the "Bank").

WITNESSETH:

WHEREAS, the City make expenditures from its Electric Utility Fund from time to time to pay the costs of acquisition and construction of extensions, additions and improvements to its Electric Utility system; and

WHEREAS, Section 1321(e) of the City's Charter authorizes the City to issue revenue bonds for the purpose of financing the generation, production, transmission and distribution of electric energy, including the acquisition and/or construction of land and facilities therefor, and provides that the City may avail itself of the procedures authorized by the general laws of the State for the issuance of such revenue bonds or the City Council of the City (the "City Council") may, by ordinance or resolution effective upon adoption, set up and establish a procedure for the issuance of such revenue bonds and all matters pertaining to the issuance and sale of such bonds; and

WHEREAS, the City Council has heretofore adopted its Resolution No. 4796 entitled "A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Electric Utility Revenue Bonds" on May 8, 1984, as amended by Resolution No. 4804, adopted on May 29, 1984, and as amended by Resolution No. 7313, adopted on April 25, 2006, and has heretofore adopted its Resolution No. 4934 entitled "A Resolution of the City Council of the City of Santa Clara Establishing Procedures for the Authorization, Issuance and Sale of Refunding Electric Utility Revenue Bonds" on April 30, 1985, as amended by Resolution No. 4966, adopted on July 9, 1985, as supplemented by Resolution No. 4967, adopted on July 9, 1985, and as amended by Resolution No. 7314, adopted on April 25, 2006, each of which includes any supplemental procedural resolution adopted pursuant thereto (collectively, the "Resolution"); and

WHEREAS, the City Council has determined that it is in the best interests of the City to enter into a credit facility with a bank, and for the indebtedness thereunder to be evidenced by Electric Utility revenue bonds, pursuant to said authority granted in the City Charter and the Resolution, to defray certain of the expenditures made in the payment of costs of acquisition and construction of certain additions to and improvements of the Electric Utility system and the acquisition of land therefor; and

WHEREAS, the Bank is willing to provide a credit facility for such purposes on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the respective agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE ONE
DEFINITIONS

Section 1.1 *Definitions*. As used in this Agreement:

*"**Act**"* has the meaning set forth in Section 7.18 hereof.

*"**Adjusted Net Revenues**"* has the meaning set forth in the Indenture.

*"**Agreement**"* means this Loan Agreement.

*"**Assignee**"* has the meaning set forth in Section 7.5 hereof.

"Available Electric Revenues" means for any period, the Adjusted Net Revenues for such period less all amounts required to be paid under the Indenture for principal, interest, reserve fund and any other debt service or other requirements on the Electric Revenue Bonds and any Parity Debt as the same shall become due in such period.

*"**Bank**"* means Banc of America Preferred Funding Corporation, and its successors and assigns.

*"**Banking Arrangements**"* means (a) the agreements of the Bank and the City set forth in this Agreement and the Bond, including, without limitation, (i) any commitment to extend credit, (ii) any maintenance of the commitment to extend credit and (iii) the holding of the Bond, and (b) any participation agreement or similar arrangement entered into in connection with the foregoing.

*"**Bank-Related Persons**"* means the Bank and its officers, directors, employees and agents.

*"**Bond**"* means the Subordinated Electric Revenue Bond of the City substantially in the form set forth in Exhibit A hereto, evidencing the obligation of the City to repay the Loans and interest thereon, issued under the Bond Law and in accordance with this Agreement.

*"**Bond Law**"* has the meaning set forth in the Indenture.

*"**Business Day**"* means any day other than a Saturday, Sunday or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed.

*"**Capital Lease**"* means any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

*"**Capitalized Interest Loan**"* has the meaning set forth in Section 2.1 hereof.

*"**Capitalized Interest Payment Date**"* has the meaning set forth in Section 2.1 hereof.

*"**Capitalized Lease Obligation**"* means the amount of the liability shown on the balance sheet of any Person in respect of a Capital Lease as determined in accordance with GAAP.

*"**Change in Law**"* means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Change in Law**", regardless of the date enacted, adopted or issued.

*"**City**"* means the City of Santa Clara, a municipal corporation and chartered city duly organized and existing under the Constitution and laws of the State.

*"**Closing Date**"* means the date on which the conditions set forth in Section 3.1 have been satisfied or waived by the Bank.

*"**Code**"* means the Internal Revenue Code of 1986, and any successor statute thereto.

*"**Default Rate**"* means a rate per annum equal to twelve percent (12%).

*"**Determination of Taxability**"* means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability has occurred;

(ii) on the date when the Bank notifies the City that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax exempt municipal finance to the effect that an Event of Taxability has occurred unless, within one hundred eighty (180) days after receipt by the City of such notification from the Bank, the City shall deliver to the Bank a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the City shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the City, or upon any review or audit of the City or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the City shall receive notice from the Bank that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Bank the interest on the Loans due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the City has been afforded the reasonable opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Bank, the City shall promptly reimburse the Bank for any payments, including any taxes, interest, penalties or other charges, the Bank shall be obligated to make as a result of the Determination of Taxability.

"***Electric Revenue Bonds***" has the meaning given to the term "*Bonds*" in the Indenture.

"***Enterprise***" has the meaning set forth in the Indenture.

"***Enterprise Property***" means Property owned or controlled by the City and used by the Enterprise.

"***Environmental Law***" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

"***Event of Default***" has the meaning set forth in Section 6.1 hereof.

"***Event of Taxability***" means a (i) Change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation herein or in any certificate required to be delivered hereunder) which has the effect of causing interest paid or payable on the Loans to become includable, in whole or in part, in the gross income of the Bank for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Loans to become includable, in whole or in part, in the gross income of the Bank for federal income tax purposes.

"***Excess Interest***" has the meaning set forth in Section 2.10 hereof.

"***First Equipment Loan***" has the meaning set forth in Section 2.1 hereof.

"***Fitch***" means Fitch Ratings, or any successor rating agency.

"***Funding Date***" has the meaning set forth in Section 2.1 hereof.

"***GAAP***" means generally accepted accounting principles in the United States applicable to governmental entities as in effect from time to time, applied by the City on a basis consistent with the City's most recent financial statements furnished to the Bank pursuant to Section 5.1(a) hereof.

"***Governmental Approval***" means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

"***Governmental Authority***" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, agency, body, authority, bureau or entity (including the Federal Reserve Board, any central bank or any comparable authority), or any arbitrator with authority to bind a party at law.

"***Guarantee***" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person of the type described in clauses (a), (b), (c), (d), (e) or (f) of the defined term "*Indebtedness*."

"***Hedging Instrument***" means any interest rate swap agreement, forward payment conversion agreement, futures or contracts providing for payment based on levels of, or changes in, interest rates or other indices, or contracts to exchange cash flows or a series of payments or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread or similar exposure.

"***Indebtedness***" of any person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under Capital Leases, (e) all Indebtedness of others secured by a lien on any asset of such Person, whether or not such Indebtedness are assumed by such Person, (f) all Guarantees by such Person of Indebtedness of other Persons, other than Guarantees pursuant to financial guaranty insurance policies or similar instruments and (g) all Hedging Instruments.

"***Indenture***" means the Amended and Restated Electric Revenue Bond Indenture, dated as of March 1, 2011, between the City and The Bank of New York Mellon Trust Company, N.A., as trustee.

"***Indenture Event of Default***" means an "event of default" as defined in the Indenture.

*"**Interest Payment Date**"* means January 1 and July 1 of each calendar year.

*"**Liquidated Damage Fee**"* has the meaning set forth in Section 2.5 hereof.

*"**Loan**"* and *"**Loans**"* have the respective meaning set forth in Section 2.1 hereof.

"***Loan Amount***" means, for an Original Payment Date for a prospective Loan, the amount of principal of such prospective Loan which would have been paid on such Original Payment Date had such prospective Loan been made.

*"**Lien**"* means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

*"**Material Adverse Effect**"* means (a) a material adverse effect on the ability of the City to timely perform its obligations under this Agreement or the Bond or (b) a material adverse change in, or material adverse effect upon, the legality, validity, binding effect or enforceability against the City of any material provision of any Related Document to which it is a party.

*"**Maturity Date**"* means July 1, 2024.

*"**Maximum Rate**"* means the lesser of (a) the maximum non-usurious lawful rate of interest permitted by applicable law and (b) 12% per annum.

*"**Moody's**"* means Moody's Investors Service, Inc. and its successors and assigns.

*"**Obligations**"* means all obligations of the City owed to the Bank arising hereunder, including, without limitation, all obligations to pay principal of and interest on the Loans and to pay all other amounts payable to the Bank arising under or pursuant to this Agreement and the Bond.

*"**Original Payment Date**"* means, with respect to each Loan (or prospective Loan), each date on which the principal of such Loan (or prospective Loan) would have been payable if there had been no prepayment of such Loan or failure to make such prospective Loan, as the case may be.

*"**Other Taxes**"* has the meaning set forth in Section 7.1 hereof.

*"**Parity Debt**"* has the meaning set forth in the Indenture.

*"**Participant**"* has the meaning set forth in Section 7.5 hereof.

*"**Payment Account**"* means the account designated in writing from time to time by the Bank to the City. Each such designation shall take effect two (2) Business Days after delivery of notice of designation to the City.

*"**Person**"* means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

*"**Plan**"* means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code.

*"**Potential Default**"* means an event or condition which, but for the lapse of time or the giving of notice, or both, would become an Event of Default.

*"**Prepaid Installment**"* means, for an Original Payment Date for a Loan, the amount of principal of such Loan which would have been paid on such Original Payment Date but for the prepayment of all or a portion of such Loan.

*"**Property**"* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*"**Rating Agencies**"* means, at any time, Fitch, Moody's and S&P to the extent any of them has, at the request of the City, rated, and maintains a rating, in respect of unenhanced Electric Revenue Bonds or Parity Debt

*"**Reimbursed Party**"* has the meaning set forth in Section 7.13(b) hereof.

*"**Related Documents**"* means, collectively, this Agreement, the Bond and the Indenture.

*"**Revenues**"* has the meaning set forth in the Indenture.

*"**S&P**"* means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, and its successors and assigns.

*"**Sanctions**"* has the meaning set forth in Section 4.20 hereof.

*"**Second Equipment Loan**"* has the meaning set forth in Section 2.1 hereof.

*"**Secured Debt**"* has the meaning set forth in Section 6.1(l) hereof.

*"**State**"* means the State of California.

*"**Swap**"* means any interest rate swap agreement, forward payment conversion agreement, futures or contracts providing for payment based on levels of, or changes in, interest rates or other indices, or contracts to exchange cash flows or a series of payments or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread or similar exposure.

*"**Tax-Exempt Rate**"* means the per annum rate of interest determined by the Bank in good faith on the Closing Date for a ten year tax-exempt loan in the amount of $[25,800,000] with a five (5) year par call to be made to the City on the second Business Day following the Closing Date. The Bank shall inform the City in writing of the Tax-Exempt Rate once it has

been determined. As long as no Determination of Taxability and no Event of Default has occurred and is continuing, each Loan shall bear interest at the Tax-Exempt Rate.

"***Taxable Equivalent Rate***" means the product of the Tax-Exempt Rate and the Taxable Rate Factor.

"***Taxable Period***" has the meaning set forth in Section 2.3 hereof.

"***Taxable Rate Factor***" means the quotient obtained by dividing one by the difference obtained by subtracting from one the highest Federal corporate marginal income tax rate charged to U.S. corporations (expressed as a decimal). As of the date of this Agreement, the highest Federal corporate margin tax rate is 35% and the Taxable Rate Factor is 1.53846.

"***Taxes***" has the meaning set forth in Section 7.1 hereof.

"***Treasury Rate***" means, with respect to a Prepaid Installment or Loan Payment, the yield on the Treasury Constant Maturity Series with a maturity equal to the Original Payment Date of the Prepaid Installment or Loan Amount, as the case may be (calculated as of the date of prepayment or funding in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate.

Section 1.2 *Incorporation of Certain Definitions by Reference*. Each capitalized term used herein and not defined herein shall have the meaning provided therefor in Indenture.

Section 1.3 *Computation of Time Periods*. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

Section 1.4 *Construction*. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular includes the plural, the part includes the whole and "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "including" has the meaning "including, but not limited to." The section headings contained in this Agreement and the table of contents preceding this Agreement is for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Related Document).

Section 1.5 *Accounting Matters*. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP.

Section 1.6 *Times*. All times are Pacific time.

ARTICLE TWO
LOANS

Section 2.1 *Loans*. Subject to the terms and conditions set forth herein, the Bank agrees to make a loan to the City in the amount of $[25,800,000] on the Closing Date[1] (the "***First Equipment Loan***"), a loan in the amount of $[6,000,000] on [April 15], 2015 (the "***Second Equipment Loan***") and a capitalized interest loan (each, a "***Capitalized Interest Loan***") on each of January 1, 2015, July 1, 2015 and January 1, 2016 (each, a "***Capitalized Interest Payment Date***") in an amount equal to, (x) in the case of the first Capitalized Interest Loan, the amount of interest accrued on the First Equipment Loan and the Second Equipment Loan from their respective Funding Date to and excluding the first Capitalized Interest Payment Date, and (y) in the case of each subsequent Capitalized Interest Loan, the amount of interest accrued on the First Equipment Loan, the Second Equipment Loan and each preceding Capitalized Interest Loan from the preceding Capitalized Interest Payment Date (or, in the case of the preceding Capitalized Interest Loan, its Funding Date (as defined below)) to and excluding the current Capitalized Interest Payment Date (the First Equipment Loan, the Second Equipment Loan and each Capitalized Interest Loan, each, a "***Loan***," and, collectively, the "***Loans***"). The date on which a Loan is made available to the City is hereinafter referred to as a "***Funding Date***." Each of the First Equipment Loan and the Second Equipment Loan shall be made available in immediately available funds on the applicable Funding Date to the account of the City designated in writing to the Bank at least two (2) Business Days prior to the applicable Funding Date. The proceeds of each Capitalized Interest Loan shall be applied by the Bank to pay accrued and unpaid interest to the Bank on the outstanding Loans.

Section 2.2 *Interest*. Interest shall accrue on each Loan from and including the Funding Date thereof to and including the date on which such Loan is paid in full. As long as no Determination of Taxability and no Event of Default has occurred and is continuing, the Loans shall bear interest at a rate per annum equal to the Tax-Exempt Rate calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months. As long as no Event of Default has occurred and is continuing, upon a Determination of Taxability, each Loan shall bear interest from the Funding Date thereof or, if later, the date that taxability commences, at a rate per annum equal to the Taxable Equivalent Rate calculated on the basis of a 360-day year consisting of twelve (12) thirty (30) day months. During the continuance of an Event of Default, each Loan shall bear interest at the Default Rate and shall be calculated on the basis of a 360-day year and actual days elapsed. Interest shall be payable semi-annually on January 1 and July 1 of each

[1] Note: The Bank can provide firm pricing for two days. Accordingly, if the closing is scheduled to occur on June 12, the Bank can indicate pricing on June 10 that is good through June 12. If the Bank provides pricing on June 10 for a scheduled closing on June 12 and the closing does not occur on June 12, then the Bank can provide new pricing on June 13 that is good for another two days. Pricing cannot roll on a daily basis.

calendar year, commencing on July 1, 2016. Following the Maturity Date, any accrued and unpaid interest shall be payable upon demand.

Section 2.3 *Determination of Taxability*.

(a) In the event a Determination of Taxability occurs the City hereby agrees to pay to the Bank on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Bank on the Loans during the period for which interest on the Loans is included in the gross income of the Bank (the "***Taxable Period***") if the Loans had borne interest at the Taxable Equivalent Rate, and (B) the amount of interest actually paid to the Bank during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Bank as a result of interest on the Loans becoming included in the gross income of the Bank, together with any and all reasonable attorneys' fees, court costs, or other out-of-pocket costs incurred by the Bank in connection therewith;

(b) Subject to the provisions of paragraph (c) below, the Bank shall afford the City the reasonable opportunity, at the City's sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Loans to be included in the gross income of the Bank or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Loans, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); and

(c) As a condition precedent to the exercise by the City of its right to contest set forth in paragraph (b) above, the City shall, on demand, immediately reimburse the Bank for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Bank (in its sole discretion) that may be incurred by the Bank in connection with any such contest, and shall, on demand, immediately reimburse the Bank for any payments, including any taxes, interest, penalties or other charges payable by the Bank for failure to include such interest in its gross income.

Section 2.4 *Repayment*. The Loans shall be repaid in annual installments on July 1 of each calendar year, commencing on July 1, 2016, and ending on the Maturity Date. Each installment shall be sized so as to produce, as nearly as possible, level annual payments of principal and interest.

Section 2.5 *Liquidated Damages Fee for Prepayment or Failure to Fund*. The Loans may be prepaid in whole, or in part, on any date, with three (3) days prior written notice to the Bank by payment of an amount equal to the principal amount to be prepaid plus accrued interest thereon to the date of prepayment plus if the Loans are prepaid prior to July 1, 2019 the Liquidated Damage Fee. If for any reason (other than a default by the Bank), the First Equipment Loan or the Second Equipment Loan fails to fund on the Funding Date therefor, the City shall pay the Bank a Liquidated Damage Fee. For purposes hereof, the "***Liquidated Damage Fee***" will be the sum of the fees calculated separately for each Prepaid Installment or Loan Amount, as the case may be, and for each Original Payment Date prior to July 1, 2019, as follows:

(i) The Bank will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding or on the Loan Amount had the prospective Loan been made, as the case may be, until the applicable Original Payment Date.

(ii) The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment or Loan, as the case may be, if it were reinvested from the date of prepayment or Funding Date, as the case may be, through the Original Payment Date, using the Treasury Rate.

If (i) minus (ii) for the Prepaid Installment or Loan Amount, as the case may be, is greater than zero, the Bank will discount the monthly differences to the date of prepayment or Funding Date, as the case may be, by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment or Loan Amounts, as the case may be.

Section 2.6 *The Bond.* The Loans shall be evidenced by the Bond payable to the Bank in an amount equal to the aggregate principal amount of the Loans. The Bank shall record, and prior to any transfer thereof or of its rights or obligations under this Agreement shall endorse on the schedules forming a part thereof, appropriate notations to evidence the date, amount, type and maturity of each Loan made by it and the date and amount of each payment of principal made by the City with respect thereto; *provided, however*, that the failure of the Bank to make any such recordation or endorsement shall not affect the obligations of the City hereunder or under such Bond. The Bank is hereby irrevocably authorized by the City so to endorse the Bond and to attach to and make a part of such Bond a continuation of any such schedule as and when required.

Section 2.7 *Method of Payment; Etc.* All payments to be made by the City under this Agreement (other than payment of counsel fees which shall be paid directly to counsel) shall be made at the Payment Account of the Bank not later than 12:00 noon, Los Angeles time, on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. Any payments received by the Bank later than 3:00 p.m. on any day shall be deemed to have been paid on the next succeeding Business Day and interest shall accrue thereon until such next Business Day at the rate applicable thereto.

Section 2.8 *Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

Section 2.9 *Late Payments.* If the principal amount of any Obligation is not paid when due, such Obligation shall bear interest until paid in full at a rate per annum equal to the Default Rate, payable upon demand.

Section 2.10 *Maximum Rate; Payment of Fee.* If the rate of interest on any Obligation shall exceed the Maximum Rate for any period for which interest is payable, then (a) interest at the Maximum Rate shall be due and payable with respect to such interest period; and, (b) to the

extent permitted by law, interest at the rate equal to the difference between (i) the rate of interest calculated in accordance with the terms hereof without regard to the limitation of the Maximum Rate; and (ii) the Maximum Rate (the *"**Excess Interest**"*), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the City shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. In consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by law, the City shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest on the date on which the unpaid principal of the Loans is repaid in full.

Section 2.11 *Security.* The Available Electric Revenues are hereby pledged to the payment of the Loans and the Bond and all Obligations of the City under this Agreement (without duplication) and all other obligations of the City secured by the Available Electric Revenues on parity therewith without priority or distinction of one over the other. Said pledge of and lien on Available Electric Revenues shall be valid and binding from and after delivery by the City of this Agreement and the Bonds, without any physical delivery thereof or further act. The pledge of Available Electric Revenues herein made is irrevocable until all of the Loans and the Bond have been paid and retired and any related Obligations of the City under this Agreement have been satisfied. The general fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the Loans or the Bond or any other Obligations of the City hereunder.

ARTICLE THREE
CONDITIONS PRECEDENT

Section 3.1 *Conditions Precedent to Effectiveness.* This Agreement shall become effective upon the satisfaction or waiver by the Bank of the following conditions:

(a) *Bank Determinations.* On the Closing Date, the Bank shall be satisfied that (i) there shall exist no Potential Default or Event of Default; (ii) the representations and warranties of the City contained in Article Four of this Agreement that are not qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all material respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all material respects as of such specified date); (iii) the representations and warranties of the City contained in Article Four of this Agreement that are qualified by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all respects as of such specified date); and (iv) no event or change shall have occurred since June 30, 2013 and no circumstance shall exist that could reasonably be expected to have Material Adverse Effect on the City.

(b) *Documents*. On the Closing Date, the Bank shall have received executed copies of each of the following documents, which documents shall be in full-force and effect on the Closing Date and in form and substance satisfactory to the Bank:

(i) a certified copy of the Indenture (including all amendments and supplements to the Closing Date);

(ii) the Bond; and

(iii) this Agreement.

(c) *Legal Opinions*. The Bank shall have received legal opinions, in form and substance satisfactory to the Bank, addressed to the Bank and dated the Closing Date, of: (i) Norton Rose Fulbright LLP, special counsel to the City, which shall include, without limitation, an opinion to the effect that interest on the Bond is excludable from the gross income of the Bank for Federal income tax purposes and (ii) the City Attorney.

(d) *Supporting Documents of the City.* There shall have been delivered to the Bank such information and copies of documents, approvals (if any) and records certified, where appropriate, of corporate and legal proceedings as the Bank may have requested relating to the City's entering into and performing this Agreement, the other Related Documents to which it is a party and the transactions contemplated hereby and thereby. Such documents shall, in any event, include:

(i) A certificate of the City, in form and substance satisfactory to the Bank, executed by an executive officer of the City, dated the Closing Date to the effect that: (A) there exists no Potential Default or Event of Default; (B) the representations and warranties of the City contained in Article Four of this Agreement that are not qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all material respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all material respects as of such specified date); (C) the representations and warranties of the City contained in Article Four of this Agreement that are qualified by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all respects (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all respects as of such specified date); (D) no event or change shall have occurred since June 30, 2013 and no circumstance shall exist that the City believes could reasonably be expected to have Material Adverse Effect; and (E) all Governmental Approvals which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the City of its obligations under the Related Documents, have been duly obtained;

(ii) An incumbency and signature certificate with respect to the officers or agents of the City who are authorized to execute any documents or

instruments on behalf of the City under this Agreement and the other Related Documents being delivered on the Closing Date to which the City is a party; and

(iii) The City's most recent audited financial statements of the Enterprise Fund, current annual budget of the Enterprise and investment policy.

(e) *Payment of Fees and Expenses.* The Bank shall have received evidence that all fees and expenses payable on the Closing Date pursuant to this Agreement shall have been paid.

(f) *Material Adverse Change.* No Material Adverse Effect shall have occurred since June 30, 2013.

(g) *Filing of Form 8038*. The Bank shall have received evidence that the City has filed an Internal Revenue Service Form 8038 with respect to the Bond.

(h) *Proceedings.* The Bank shall have received such other certificates or opinions as the Bank may reasonably request, which request shall be made not later than five (5) Business Days prior to the Closing Date.

Section 3.2 *Conditions Precedent to Making of Loans*. The obligation of the Bank to make a Loan on the Funding Date therefor is subject to the following:

(a) (i) the representations and warranties of the City contained in Article Four of this Agreement that are not qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all material respects on and as of such Funding Date as though made on and as of such Funding Date (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all material respects as of such specified date); and (ii) the representations and warranties of the City contained in Article Four of this Agreement that are qualified by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier shall be true and correct in all respects on and as of such Funding Date as though made on and as of such Funding Date (or, if any such representation or warranty is expressly stated to have been made as of a specified date, shall be true and correct in all respects as of such specified date); and

(b) no event has occurred and is continuing which constitutes a Potential Default or an Event of Default; and

Unless the City shall have previously advised the Bank in writing that one or both of the above statements is no longer true, the City shall be deemed to have represented and warranted on the applicable Funding Date that both of the above statements are true and correct.

ARTICLE FOUR
REPRESENTATIONS AND WARRANTIES

In order to induce the Bank to enter into this Agreement, the City represents and warrants to the Bank as follows:

Section 4.1 *Organization, Powers, Etc.* The City is a municipality and chartered city of the State of California duly organized and validly existing under and pursuant to the Constitution and laws of the State of California, including its City Charter and has: (a) full power and authority under the Constitution and the laws of the State of California, including its City Charter, to enter into and perform its obligations under this Agreement and the other Related Documents and (b) all material governmental licenses, authorization, consents and approvals required to carry on the business of the Enterprise as now conducted and to enter into and perform its obligations under this Agreement and the other Related Documents.

Section 4.2 *Authorization, No Contravention.* The execution, delivery and performance by the City of this Agreement and each other Related Document have been duly authorized by all necessary action, and require no action or consent by or in respect of, or filing with, any Governmental Authority. The execution and delivery by the City of this Agreement and the other Related Documents to which it is a party do not and will not (a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the City is subject; (b) result in a breach of or constitute a default under the provisions of any resolution, indenture, loan or credit agreement or any other material agreement, material lease or material instrument to which the City may be or is subject or by which it, or any Enterprise Property, is bound; or (c) result in, or require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any Enterprise Property other than the pledge of Adjusted Gross Revenues created by the Indenture and the pledge of Available Electric Revenues created hereby. The performance by the City of this Agreement and the other Related Documents to which it is a party does not and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the City is subject; (ii) result in a breach of or constitute a default under the provisions of any resolution, indenture, loan or credit agreement or any other agreement, lease or instrument to which the City may be or is subject or by which it, or any Enterprise Property, is bound; or (iii) result in, or require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any Enterprise Properties (other than the pledge of Adjusted Gross Revenues created by the Indenture and the pledge of Available Electric Revenues created hereby), except in the case of clause (ii) or (iii) any such breach, default, creation or imposition that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 4.3 *Binding Effect.* This Agreement, the Bond and each other Related Document to which the City is a party constitute legal, valid and binding obligations of the City, enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles whether or not sought, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal corporations in the State.

Section 4.4 *Financial Information.* The City's audited Electric Utility Enterprise Fund statement of net position as of June 30, 2013, statement of revenues, expenses and changes in net position for the year ended June 30 2013 and statements of cash flows for the year ended June

30, 2013 and the unqualified opinion letter dated November 5, 2013, of Maze & Associates, independent certified public accountants, copies of which have been delivered to the Bank, are in all respects complete and correct and fairly present the financial condition of the City as at such dates for the periods covered by such statements, all in conformity with GAAP. Since June 30, 2013, there has been no Material Adverse Effect.

Section 4.5 *Litigation*. There is no action, suit or proceeding pending against or, to the best knowledge of the City, threatened against the City relating to the Bond Law, this Agreement, the Bond or any other Related Document before any court or other Governmental Authority in which there is a reasonable possibility of an adverse decision which could reasonably be expected to have a Material Adverse Effect.

Section 4.6 *Employee Benefit Plans, Etc.* The City is not subject to Title I reporting and disclosure requirements, Title II or Title IV of ERISA and has no obligation or liability under or in respect of any "employee benefit plan" within the meaning of Section 3(3) of ERISA or any other form of bonus, incentive compensation, deferred compensation or other similar plan or arrangement.

Section 4.7 *Environmental Laws*. The City has not received notice to the effect that its Enterprise operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

Section 4.8 *No Sovereign Immunity*. The City is not entitled to claim the defense of sovereign immunity in any action, suit or proceeding arising under or relating to this Agreement or any of the other Related Documents (a) for monetary damages or (b) for the execution or enforcement of any judgment (subject to limitations on legal remedies against public agencies in the State), nor may there be attributed to the City any such immunity (whether or not claimed).

Section 4.9 *Disclosure*. [All information heretofore furnished (including pursuant to any representation or warranty) by the City to the Bank for purposes of or in connection with the negotiation of this Agreement and the transactions contemplated hereby is, and all such information hereafter furnished by the City to the Bank will be, true, accurate and complete in all material respects on the date as of which such information is stated or certified.][2] There is no fact known to the City which the City has not disclosed to the Bank in writing which the City believes will result in a Material Adverse Effect or, so far as the City can now reasonably foresee, is likely to result in a Material Adverse Effect.

Section 4.10 *Status of Obligations*. The obligation of the City with respect to the payment of all Loans and the Bond are special, limited obligations of the City which are payable as to both principal of and interest from, and are secured by a pledge of Available Electric Revenues, and the City shall not be required to advance money from any other source other than

[2] The Bank is still reviewing this provision.

Available Electric Revenues. The Available Electric Revenues constitute a trust fund for the security and payment of the interest on and principal of the Loans and the Bond and all Obligations of the City under this Agreement (without duplication) and all other obligations of the City secured by the Available Electric Revenues on parity therewith. This Agreement creates a valid security interest in the Available Electric Revenues as security for the punctual payment of the Loans and the Bond and the other Obligations of the City hereunder. All Obligations payable by the City under this Agreement are special limited obligations of the City payable solely from Available Electric Revenues, and the City shall not be required to advance money from any other source other than Available Electric Revenues.

Section 4.11 *Incorporated Representations*. The City makes each of the representations, warranties and covenants contained in the Indenture, and for the benefit of, the Bank as if the same were set forth at length herein together with all applicable definitions thereto. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Indenture shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

Section 4.12 *Pending Legislation*. There is no amendment to the Constitution of the State, any State law or any City law, or to the knowledge of the City, proposed amendment to the Constitution of the State, any State law or any City law certified for placement on a ballot within the State or the City, or any legislation that has passed either house of the United States Congress, or, to the knowledge of the City, any published judicial decision interpreting any of the laws of the United States, the Constitution of the State, any State law or any City law, the effect of which could reasonably be expected to result in a Material Adverse Effect.

Section 4.13 *Compliance*. The City is in compliance with all laws, ordinances, orders, rules and regulations applicable to the Enterprise, except to the extent noncompliance could not reasonably be expected to result in a Material Adverse Effect.

Section 4.14 *Default*. The City is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Related Document or other resolution, agreement or instrument to which it is a party which default could reasonably be expected to result in a Material Adverse Effect. No Event of Default has occurred and is continuing.

Section 4.15 *Margin Stock*. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no portion of the proceeds of any Loan will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

Section 4.16 *Tax-Exempt Status*. The City has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other person or entity, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bond from gross income for purposes of federal income taxation or the exemption of such interest from State of California income taxes.

Section 4.17 Solvency. The Enterprise is able to pay its debts and satisfy its liabilities as they come due, is solvent and has not made any assignment for the benefit of creditors.

Section 4.18 Sanctions. The City represents that neither the City or, to the knowledge of the City, any council member, officer, employee, agent, affiliate or representative of the City is currently the subject of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**").

ARTICLE FIVE
COVENANTS

The City will do, or will refrain from doing, as applicable, the following so long as any Obligations remain outstanding, unless the Bank shall otherwise consent in writing:

Section 5.1 Reporting Requirements. The City shall furnish to the Bank:

(a) as soon as available and in any event within 210 days after the end of each fiscal year, a statement of net position of the Electric Utility Enterprise Fund of the City as of the end of such Fiscal Year, a statement of revenues, expenses and changes in fund net assets of the Electric Utility Enterprise Fund of the City for such Fiscal Year and net position of the Electric Utility Enterprise Fund of the City for such Fiscal Year and a statement of cash flows of the Electric Utility Enterprise Fund of the City for such Fiscal Year, in each case prepared in accordance with GAAP and in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an opinion thereon of a firm of independent public accountants of recognized national standing, selected by the City and reasonably acceptable to the Bank (it being understood that each of Vavrinek, Trine, Day & Company, LLP and Maze & Associates is reasonably acceptable to the Bank), to the effect that, in the opinion of such firm, (i) the audit was conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and (ii) the fund financial statements of the City present fairly, in all material respects, the financial position of the business-type activities of the Enterprise, as of the end of the applicable Fiscal Year, and the changes in financial position and cash flows thereof for the applicable Fiscal Year then ended in conformity with GAAP, which opinion shall contain no qualifications other than qualifications relating to the implementation of rules issued by the Government Accounting Standards Board;

(b) simultaneously with the delivery of each set of financial statements referred to in clause (i) above, a certificate of the City stating that, to the best knowledge of the [chief financial officer (or his/her designee) of the City][3], there exists on the date of such certificate no Event of Default or, if any Event of Default then exists, setting forth

[3] City to confirm.

the details thereof and the action which the City is taking or proposes to take with respect thereto;

(c) promptly after knowledge thereof by the City, written notice of the occurrence of any Event of Default, together with a statement of the City setting forth the details thereof and the action which the City is taking or proposes to take with respect thereto;

(d) promptly after process has been served on the City, notice of any action, suit or proceeding before any court or Governmental Authority in which there is a reasonable probability of an adverse decision which could reasonably be expected to result in a Material Adverse Effect;

(e) promptly after obtaining knowledge thereof, written notice of any change in the long-term ratings assigned by a Rating Agency to any unenhanced Electric Revenue Bonds or Parity Debt;

(f) as soon as available to the City, copies of all enacted legislation (including new legislation, amended legislation or repealed legislation) the effect of which, in the reasonable judgment of the City, could reasonably be expected to have a Material Adverse Effect;

(g) promptly upon the adoption thereof, a copy of the Enterprise's five-year financial plan and the Enterprise's budget, together with each amendment or supplement thereto that may be adopted from time to time during each Fiscal Year; and

(h) from time to time such additional information regarding the financial position, operations or business of the Enterprise as the Bank may reasonably request.

Section 5.2 *Notices*. In addition to the notices described in Section 5.1(a), the City will provide promptly to the Bank the following:

(a) notice of any event or circumstance known to the City which in the reasonable judgment of the City could reasonably be expect to result in a Material Adverse Effect;

(b) notice of any inquiry, investigation or audit of the Enterprise by the Securities and Exchange Commission, the Department of Justice or the Internal Revenue Service, of which the City has actual knowledge, whether or not received in writing by the City;

(c) notice of any proposed amendment or supplement to the Indenture other than a supplement setting forth only the terms of a new series of Electric Revenue Bonds and copies of all such amendments and supplements promptly following the execution thereof; and

(d) any reportable event notice relating to the Electric Revenue Bonds (as described in b(5)(i)(C) of Rule 15c2-12 promulgated pursuant to the Securities Exchange

Act of 1934, as amended) disseminated, distributed or provided in satisfaction of or as may be required pursuant to such requirements (or notice that such event notice has been filed with the Electronic Municipal Market Access service and is publicly available).

Section 5.3 *Further Assurances*. The City shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and documents as in the reasonable opinion of the Bank are necessary to effectuate the provisions of this Agreement and the other Related Documents.

Section 5.4 *Inspection of Property, Books and Record*. The City shall keep adequate records and books of account, in which complete entries will be made, reflecting all financial transactions of the Enterprise; and at any reasonable time and from time to time upon reasonable notice thereof, permit the Bank or any agents or representatives thereof, at the expense of the Bank, to examine and make copies of and abstracts from the records and books of account of, and to the extent permitted by applicable law, visit the properties of, the Enterprise and to discuss the affairs, finances and accounts of the Enterprise with any of the City's officers, trustees and (with notice to the City) independent auditors (and by this provision, the City authorizes said auditors to discuss with the Bank or its representatives the affairs, finances and accounts of the Enterprise).

Section 5.5 *Waiver of Immunity*. If as a result of a Change in Law the defense of sovereign immunity in respect of contract claims becomes available to the City, the City agrees, to the fullest extent permitted by law, not to assert the defense of sovereign immunity in any proceeding to enforce any of the obligations of the City under this Agreement or the Bond in any court of competent jurisdiction.

Section 5.6 *Compliance with Laws; Compliance with Agreements*. The City covenants that it will comply with the requirements of (a) all applicable laws of any Governmental Authority having jurisdiction over the City and any Enterprise Property, including, without limitation, the Bond Law, all Environmental Laws and ERISA, and (b) all investment policy guidelines of the City; in each case, the non-compliance with which would have a Material Adverse Effect, unless the same is being contested in good faith and by appropriate proceedings and such contest shall operate to stay the Material Adverse Effect of any such non-compliance. The City will observe and perform all of its obligations under this Agreement and the Bond and all of its material obligations under the Indenture. The City will maintain in effect and enforce policies and procedures designed to ensure compliance by the City and its council members, officers, employees and agents with applicable Sanctions.

Section 5.7 *Disclosure to Assignees and Participants*. The City shall permit the Bank to disclose any information received by the Bank in connection herewith including, without limitation, the financial information described in Section 5.1(a) hereof, to any Assignee or Participant.

Section 5.8 *Incorporation of Covenants*. From and after the date hereof and so long as this Agreement is in effect the City agrees that it will, for the benefit of the Bank, comply with, abide by, and be restricted by all the agreements, covenants, obligations and undertakings

contained in the provisions of the Indenture, regardless of whether any indebtedness is now or hereafter remains outstanding thereunder, together with the related definitions, exhibits and ancillary provisions, all of which are incorporated herein by reference, *mutatis mutandis*, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety, and no termination, amendment, modification or waiver to any of the foregoing shall in any manner constitute a termination, amendment, modification or waiver of the provisions thereof as incorporated herein unless consented to in writing by the Bank.

Section 5.9 *Maintenance of Tax-Exempt Status of the Loans*. The City shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the exclusion of interest on the Bond from gross income for purposes of federal income taxation or the exemption of such interest from California income taxes.

Section 5.10 *Insurance Requirements*. The City shall insure the properties of the Enterprise against loss or damage and shall maintain general liability insurance coverage against such risks and in such amounts as is customarily maintained by entities similarly situated and operating like properties and businesses to that of the Enterprise by insurance companies believed by the City to be responsible (as determined in its reasonable discretion). Notwithstanding the foregoing, the City may provide self-insurance in order to provide for the coverage described in the immediately preceding sentence.

Section 5.11 *Rates and Charges*. The City will, at all times while any Loan remains unpaid, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Enterprise so as to yield Revenues, in each Fiscal Year, sufficient so that Adjusted Net Revenues for such year shall be at least equal to 1.0 times the amount of debt service for such year on all Electric Revenue Bonds, Parity Debt, Loans and all other Debt secured by and payable from Adjusted Net Revenues or Available Electric Revenues. For purposes of determining compliance with this Section 5.11, Adjusted Net Revenues shall include the amounts on deposit in the Rate Stabilization Fund and any other unrestricted funds of the Enterprise designated by the City Council by resolution and available for the purpose of paying Operating Expenses and/or Debt Service (as such terms are defined in the Indenture).

Section 5.12 *Liens; Indebtedness; Swaps; Consolidation and Mergers*.

(a) Except for the Lien over the Adjusted Net Revenues created by the Indenture, the City will not hereafter create or suffer to exist any Lien on the Available Electric Revenues on a basis that is senior to or on parity with the Lien created pursuant to this Agreement. The City will not create or suffer to exist any Lien over any Enterprise Property which could reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing, in the event a Lien attaches after the Closing Date (i) to the Available Electric Revenues or (ii) to Enterprise Property and which if not removed could reasonably be expected to have a Material Adverse Effect, in either case the City shall take all reasonable action necessary to remove such Lien as soon as practicable. For avoidance of doubt, the Bank acknowledges that nothing herein is intended to preclude the future issuance by the City of additional Electric Revenue Bonds and Parity Debt in accordance with the terms of the Indenture.

(b) After the Closing Date, the City will not issue or incur any additional Indebtedness secured by a pledge of or lien upon Available Electric Revenues unless such issuance or incurrence complies with the Constitution and other laws of the State of California, including the Bond Law or is made expressly subordinate to the payment of the Obligations; *provided, however*, that the City has, and may in the future, enter into one or more Swap Agreements that constitute Parity Debt in order to hedge interest rate exposure in respect of Electric Revenue Bonds with termination payments secured by Adjusted Net Revenues on parity with the pledge of Available Electric Revenues made hereunder for the payment of the Obligations. The City will not issue any Indebtedness secured by a pledge of and lien upon Adjusted Net Revenues that is senior in right of payment to the Electric Revenue Bonds and the Parity Debt; provided that, nothing in this Agreement shall be construed to limit the ability of the City to incur Operating Expenses as defined in the Indenture.

(c) The City will preserve and maintain its existence as a municipal corporation and chartered city under the Constitution and laws of the State and will maintain exclusive control over the direction and operation of the Enterprise and the Enterprise Property and will not permit the Enterprise to merge or consolidate with or into any other Person or acquire substantially all of the assets of any other Person unless (i) the City continues to maintain exclusive control over the direction and operation of the Enterprise and the Enterprise Property, (ii) no Event of Default has occurred and is continuing or would result from such merger, consolidation or acquisition and (iii) such merger, consolidation or acquisition could not reasonably be expected to result in a Material Adverse Effect.

Section 5.13 *Use of Proceeds; Federal Reserve Regulations*. The proceeds of the First Equipment Loan and the Second Equipment Loan will be used to fund the acquisition and integration of a phase-shifting transformer and for other lawful purposes of the City, including the acquisition of property. The City covenants that it will not knowingly, directly or indirectly, use the proceeds of the Loans to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions. No proceeds from moneys received hereunder shall be used by the City to purchase Margin Stock in violation of Regulation U, as amended, promulgated by the Board of Governors of the Federal Reserve System.

Section 5.14 *Accounting Changes*. The City shall not change its method[4] of accounting or the times of commencement or termination of Fiscal Years or other accounting periods without first disclosing in writing such change to the Bank.

Section 5.15 *Maintenance of Enterprise Property*. The City shall maintain, preserve and keep all of its Enterprise Property in good repair, working order and condition (ordinary wear and tear excepted) and will, from time to time, make all needful and proper repairs, renewals, replacements, and additions and betterments thereto so that at all times the efficiency thereof shall be full preserved and maintained; *provided, however*, that the City may dispose of obsolete Enterprise Property and Enterprise Property no longer used and not expected to be used

[4] By method we mean cash, accrual or modified accrual basis.

at a future date. The City shall not change in any fundamental manner the use to which the Enterprise Property is currently made.

Section 5.16 *Preferential Repayment*. The City shall not permit any Person party to any agreement the obligations of which are secured by a pledge of Adjusted Net Revenues on parity with the City's payment obligations under this Agreement, including, without limitation, any credit provider or liquidity provider, to have any right under such agreement to cause the acceleration, tender, redemption or repayment (including by term-out or shortened amortization) of such obligations, on a basis that is shorter than or more favorable than the basis that the Bank is entitled to receive hereunder.

Section 5.17 *Filing of the Agreement*. In the event the City delivers or permits, authorizes or consents to the delivery of this Agreement to any Person for delivery to the Municipal Securities Rulemaking Board, prior to such delivery the City agrees that it shall redact such information contained herein as may be requested by the Bank and which is consistent with MSRB Notice 2011-17 (February 23, 2011). Only such copy of this Agreement reflecting such redacted material shall be delivered to the Municipal Securities Rulemaking Board.

ARTICLE SIX
DEFAULTS

Section 6.1 *Events of Default and Remedies*. The occurrence and continuance of one or more of the following events shall constitute an event of default hereunder (*"**Event of Default**"*):

(a) (i) any representation or warranty made by the City in this Agreement (or incorporated herein by reference) that is not qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier, shall prove to have been incorrect or untrue in any material respect or (ii) any representation or warranty made by the City in this Agreement (or incorporated herein by reference) that is qualified in any way by reference to "material", "materiality", "Material Adverse Effect" or similar qualifier, shall prove to have been incorrect or untrue in any respect; or

(b) any Indenture Event of Default shall have occurred and be continuing beyond the applicable grace period; or

(c) the City fails to pay, or cause to be paid, when due (i) the principal of or interest on any Loan or the Bond or (ii) any other Obligation owed to the Bank and such failure shall continue unremedied for a period of two (2) Business Days; or

(d) default in the due observance or performance by the City of any covenant set forth in Section 5.1(c), 5.11, 5.12 or 5.13; or

(e) default in the due observance or performance by the City of any other term, covenant or agreement set forth in (or incorporated by reference in) this Agreement (other than those referred to in Sections 6.1(a), 6.1(b), 6.1(c) and 6.1(d)) and the continuance of such default for thirty (30) days after the occurrence thereof; or

(f) (i) a court or other Governmental Authority with jurisdiction to rule on the validity of any Related Document to which the City is a party shall find, announce or rule that (A) such Related Document is invalid and is not a binding agreement of the City; or (B) any provision of such Related Document relating to (I) the security for the Bond and the other Obligations, (II) the City's ability to pay the Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank, in any such case is invalid and is not a binding agreement of the City; (ii) the City shall contest the validity or enforceability of, or shall deny or disaffirm its obligations under, (A) any Related Document to which the City is a party or (B) any provision of any Related Document relating to (I) the security for the Bond and the other Obligations, (II) the City's ability to pay the Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank; or (iii) the City shall seek an adjudication that (A) any Related Document to which the City is a party or (B) any provision of any Related Document relating to (I) the security for the Bond and the other Obligations, (II) the City's ability to pay the Bond and the other Obligations or perform its obligations thereunder or (III) the rights and remedies of the Bank, in any such case is not valid and binding on the City; or

(g) (i) any Related Document to which the City is a party; or (ii) any provision of any Related Document relating to (A) the security for the Bond and the other Obligations, (B) the City's ability to pay the Bond and the other Obligations or perform its obligations thereunder or (C) the rights and remedies of the Bank; or (iii) any other provision of any Related Document to which the City is a party that directly protects the Bank, in any such case shall cease for any reason to be in full force or effect; or

(h) one or more judgments, decrees or orders for the payment of money in excess of $10,000,000 payable from revenues of the Enterprise shall have been rendered against the City, which judgments, decrees or orders are not covered by insurance (or, if ostensibly covered by insurance, for which coverage has been denied or disputed by the applicable insurance carrier or carriers), and either (i) enforcement proceedings shall have commenced by any creditor or creditors upon any such uninsured (whether by lack or coverage, denied coverage or disputed coverage) judgments, decrees or orders in excess of $10,000,000 or (ii) there shall be a period of sixty (60) days or more during which either a stay of enforcement of such judgments, decrees or orders, by reason of a pending appeal or otherwise, shall not be in effect or such judgments, decrees or orders shall not be fully bonded, dismissed, discharged, satisfied or vacated; or

(i) (i) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any obligation secured by a lien, charge or encumbrance upon the Adjusted Net Revenues or the Available Electric Revenues; (ii) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, the City seeks to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; (iii) the City seeks appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of the Enterprise, or the City shall make a general assignment

for the benefit of its creditors; (iv) there shall be commenced against the City any case, proceeding or other action of a nature referred to in clause (ii) or (iii) above and the same shall remain undismissed; (v) there shall be commenced against the City any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of the Enterprise Property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within sixty (60) days from the entry thereof; (vi) the City takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), (iii), (iv) or (v) above; or (vii) the City shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(j) any of the Rating Agencies shall have downgraded for credit-related reasons its long-term unenhanced rating of any Electric Revenue Bonds or Parity Debt that is secured by a lien on and pledge of the Adjusted Net Revenues to below "Baa2" (or its equivalent), in the case of Moody's, "BBB" (or its equivalent), in the case of Fitch or "BBB" (or its equivalent), in the case of S&P, or suspended or withdrawn its rating of the same for credit-related reasons; or

(k) the rate setting authority of the City shall be limited in any way that precludes the City from fixing, charging or collecting rates and charges for the use and services of the Enterprise in an amount sufficient to pay its debts as they become due; or

(l) the City shall (i) default in any payment of any obligation (other than the Bond or the Obligations) secured by a charge, lien or encumbrance on the Adjusted Net Revenues or Available Electric Revenues that ranks senior to or on a parity with the Obligations (*"**Secured Debt**"*), beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created, or (ii) default in the observance or performance by the City of any agreement or condition relating to any Secured Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Secured Debt (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Secured Debt to become due prior to its stated maturity.

Section 6.2 *Remedies*. Upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following rights and remedies:

(a) by notice to the City, declare the Bond and all other Obligations to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the City; *provided* that upon the occurrence of an Event of Default under Section 6.1(i) hereof such acceleration shall automatically occur without any notice (unless such automatic acceleration is waived by the Bank in writing);

(b) pursue any rights and remedies it may have under the Related Documents; or

(c) pursue any other action available at law or in equity.

ARTICLE SEVEN
MISCELLANEOUS

Section 7.1 *Net of Taxes, Etc.* All payments made by the City hereunder and under the Bond shall be made without setoff, counter-claim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the overall net income of the Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) under which the Bank is organized) and all interest, penalties or similar liabilities with respect thereto (collectively, "***Taxes***"). If the City shall be required by any law, rule or regulation to deduct any Taxes from or in respect of any sum payable to the Bank under this Agreement or the Bond, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions, (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable laws, rules and regulations and (iv) within forty-five (45) days after the date of such payment, the City shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. In addition, the City agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the State of California or the State of New York from any payment made hereunder or under the Bond or from the execution or delivery or the performance of this Agreement or the Bond (hereinafter referred to as "***Other Taxes***"). The Bank shall provide to the City within a reasonable time a copy of any written notification it receives with respect to Other Taxes owing by the City to the Bank hereunder *provided* that the Bank's failure to send such notice shall not relieve the City of its obligation to pay such amounts hereunder. The City will to the maximum extent permitted by applicable law indemnify and hold harmless the Bank, and reimburse the Bank upon its written request, for the amount of any Taxes or Other Taxes so levied or imposed and paid by the Bank; *provided*, that the City shall not be obligated to indemnify the Bank for any penalties, interest or other expenses arising from the Bank's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the payment of all of the Obligations. The City shall not be required to reimburse or indemnify the Bank for any Taxes or Other Taxes pursuant to this Section 7.1 incurred or suffered more than six months prior to the date the Bank notifies the City of its payment of such Taxes or Other Taxes and of the Bank's intention to claim indemnification or reimbursement therefor (except that if the imposition of such Taxes or Other Taxes is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). If the Bank determines in its sole discretion that it has received a refund of any Taxes or Other Taxes which have been paid by the City or for which it has been indemnified or reimbursed by the City pursuant to this Section, it shall repay to

the City an amount equal to such refund (but only to the extent of amounts paid by the City under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Bank, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Notwithstanding anything to the contrary in this Section 7.1, in no event will the Bank be required to pay any amount to the City pursuant to this paragraph the payment of which would place the Bank in a less favorable net after-Tax position than the Bank would have been in if the payments, reimbursement payments or indemnification payments giving rise to such refund had never been paid. This paragraph shall not be construed to require the Bank to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the City or any other Person.

Section 7.2 *Set Off*. Upon the occurrence and during the continuance of an Event of Default, the Bank may, to the extent permitted by law and not inconsistent with the provisions of the Indenture, at any time and from time to time, without prior notice to the City or any other person (any such prior notice being expressly waived), set off and appropriate and apply, against and on account of, any obligations and liabilities of the City to the Bank arising under this Agreement and the Bond, without regard to whether or not the Bank shall have made any demand therefor, any and all deposits (general or special, including but not limited to indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) of revenues of the Enterprise and any other indebtedness at any time held or owing by the Bank to or for the credit or the account of the Enterprise.

Section 7.3 *Liability of Bank*.

(a) Neither the Bank nor any Bank-Related Person shall be liable or responsible for: (i) the use which may be made of this Agreement or any amounts made available by the Bank hereunder; (ii) the validity, sufficiency or genuineness of documents or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged (other than for fraud or forgery by the Bank or its officers or directors); or (iii) any other circumstances whatsoever in making or failing to make payment hereunder, except only that the City shall have a claim against the Bank and the Bank shall be liable to the City to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the City which a court of competent jurisdiction finally determines were caused by the Bank's gross negligence or willful failure to make payment hereunder in accordance with the terms thereof. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(b) The City assumes all risks associated with the acceptance by the Bank of documents received by telecommunication and email, it being agreed that the use of telecommunication devices and email is for the benefit of the City and that the Bank assumes no liabilities or risks with respect thereto.

Section 7.4 *Unconditional Obligations*. Subject to Section 2.11 hereof, the obligations of the City under this Agreement shall be absolute, unconditional, irrevocable in accordance with the terms of this Agreement, under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of this Agreement or, to the extent permitted by law, any other Related Document;

(b) any amendment or waiver of or any consent to departure from the terms of any Related Documents to which the Bank has not consented in writing;

(c) the existence of any claim, counterclaim, setoff, recoupment, defense or other right which any Person may have at any time against the Bank, the City or any other Person, whether in connection with any Related Document, or any other transaction related thereto, *provided, however,* that nothing herein contained shall prevent the assertion of such claim by separate suit;

(d) any statement or any other document presented other than by the Bank pursuant hereto which the Bank in good faith determines to be valid, sufficient or genuine and which subsequently proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever; and

(e) any other circumstances or happening whatsoever whether or not similar to any of the foregoing.

Section 7.5 *Assignments; Participants*. Following the earlier of (x) the date on which the Bank has made all Loans contemplated by Section 2.1 or (y) the occurrence of an Event of Default, the Bank may assign to one or more banks or other entities (each an "***Assignee***") all or any part of any of its rights or obligations hereunder and/or under the Bond, and to the extent of any such assignment the Bank shall be relieved of its obligations hereunder and each Assignee shall have the same rights and benefits hereunder and under the other Related Documents, as it would have if it were the Bank hereunder. The Bank shall have the right to grant participations in its rights (but not its obligations) under this Agreement and the Bond to one or more other banking institutions (each an "***Participant***"), and such Participants shall be entitled to the benefits of this Agreement, including, without limitation, Sections 2.3, 7.1, 7.3 and 7.13 hereof (provided that the City shall be liable only to the extent of the Bank's legal expenses incurred (and not the legal expenses of any Participant) pursuant to any of the foregoing sections), to the same extent as if they were a direct party hereto; *provided, however,* that no such participation by any such Participant shall in any way affect the obligation of the Bank hereunder and the City shall continue to deal solely and directly with the Bank in connection with this Agreement; and *provided further* that no such Participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such Participant. Notwithstanding any participation, the City may look solely to the Bank as the entity to whom the performance of any of its obligations are owed.

Section 7.6 *Survival of this Agreement*. All covenants, agreements, representations and warranties made in this Agreement shall survive the effectiveness of this Agreement and the making of the Loans and shall continue in full force and effect so long as any Obligations shall be outstanding and unpaid. The obligation of the City to reimburse the Bank, Assignees and Participants pursuant to Sections 7.1, 7.3 and 7.13 hereof and Reimbursed Parties pursuant to Section 7.13 hereof shall survive the termination of this Agreement.

Section 7.7 *Modification of this Agreement*. No amendment, modification or waiver of any provision of this Agreement or the Bond shall be effective unless the same shall be in writing and signed by the Bank and the City, and no consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the City in any case shall entitle the City to any other or further notice or demand in the same, similar or other circumstances.

Section 7.8 *Waiver of Rights by the Bank*. No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Bond shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under this Agreement and the Bond are cumulative and not exclusive of any rights or remedies which the Bank would otherwise have.

Section 7.9 *Severability*. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.10 *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES; PROVIDED, HOWEVER, THAT THE AUTHORITY OF THE CITY TO ENTER INTO THIS AGREEMENT AND THE BOND AND THE OBLIGATIONS OF THE CITY HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA.

Section 7.11 *Notices*. All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed as follows:

If to the Bank:	Banc of America Preferred Funding Corporation 901 Main Street TX1-492-11-24 Dallas, TX 75202-3714 Attention: Eric Kosmin, SVP Telephone: (214) 209-4285 Facsimile: (214) 209-3338
With a copy to:	Bank of America, N.A. 800 Fifth Avenue, Floor 34 WA1-501-34-03 Seattle, WA 98104-3176 Attention: Nancy Nuerenberg, SVP Telephone: (206) 358-6279 Facsimile: (206) 358-8815
If to the City, to	City of Santa Clara Finance Department 1500 Warburton Avenue Santa Clara, California 95050 Facsimile No.: (408) 249-0217 Telephone No.: (408) 261-5292 Attention: Director of Finance

or at such other address, facsimile number or telephone number as shall be designated by one party in a written notice to the other parties hereto.

Section 7.12 *Successors and Assigns*. This Agreement shall inure to the benefit of the parties hereto and shall bind each of the parties respective successors and assigns; *provided* that the rights and duties of the City hereunder may not be assigned or transferred (whether by operation of law or otherwise) without the prior written consent of the Bank.

Section 7.13 *Costs and Expenses; Reimbursement*.

(a) The City shall pay (i) on the Closing Date all reasonable out-of-pocket expenses of the Bank, including reasonable fees and expenses of counsel to the Bank, in connection with the preparation, negotiation, execution and delivery of this Agreement and the Bond, provided that the fees of counsel to the Bank shall not exceed $[40,000], (ii) at the time any amendment to, waiver or supplement of, or consent respect of, this Agreement or the Bond is sought, a minimum fee of $3,500 plus attorneys' fees and expenses, (iii) all reasonable out-of-pocket expenses of the Bank including reasonable fees and expenses of any counsel retained by the Bank, in connection with any Event of Default, Potential Default or alleged Event of Default or Potential Default and (iv) if any Event of Default occurs, all out-of-pocket expenses incurred by the Bank, including reasonable fees and disbursements of counsel retained in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom. All

such fees and expenses shall be paid by the City promptly following receipt by the City of an invoice for such amounts.

(b) To the maximum extent permitted by law, the City agrees to reimburse and hold harmless the Bank and each Bank-Related Person (each, a *"**Reimbursed Party**"*) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which a Reimbursed Party may incur or be subject to (or which may be claimed against a Reimbursed Party by any Person, including the City) by reason of or in connection with the execution and delivery of and consummation of the transactions contemplated under the Related Documents, including, without limitation, (i) the making of Loans hereunder and (ii) the use of the proceeds of the Loans; *provided, however,* that the City shall not be required to reimburse the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank (including without limitation, failure of the Bank to fund any Loan upon the satisfaction of the applicable conditions precedent set forth herein). Nothing in this Section 7.13 is intended to limit the obligations of the City under the Bond or of the City to pay the Obligations when due.

(c) The provisions of this Section 7.13 hereof shall survive the termination of this Agreement and the payment in full of the Obligations. The Bank shall notify the City of any amounts which are owed to a Reimbursed Party pursuant to this Section 7.13.

Section 7.14 *Headings*. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 7.15 *Counterparts*. This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

Section 7.16 *Entire Agreement*. This Agreement and the Bond constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby.

Section 7.17 *Submission to Jurisdiction; Waiver of Jury Trial*. All litigation arising out of, or related to this Agreement and the Bond shall be brought in a state or federal court located in the State of California. The City and the Bank each hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. To the extent permitted by applicable law, the City and the Bank each hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the Bond.

TO THE FULL EXTENT PERMITTED BY LAW, THE CITY AND THE BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BOND, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE CITY AND THE BANK FURTHER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, TO THE

EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR THE BOND. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR THE BOND.

In the event the waiver of jury trial set forth above shall be declared void or unenforceable, the City and the Bank each agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure.

Section 7.18 *USA PATRIOT Act Notice*. The Bank hereby notifies the City that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the *"Act"*), it is required to obtain, verify and record information that identifies the City, which information includes the name and address of the City and other information that will allow the Bank to identify the City in accordance with the Act. The City hereby agrees that it shall promptly provide such information upon request by the Bank.

Section 7.19 *Assignment to Federal Reserve Bank*. Notwithstanding Section 7.5, the Bank may assign and pledge all or any portion of the obligations owing to it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by the City to the Bank in accordance with the terms of this Agreement shall satisfy the City's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed and delivered by its respective officer thereunto duly authorized as of the date first written above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

By: _____

_____
RICHARD E. NOSKY, JR.
City Attorney

JULIO J. FUENTES
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

ATTEST:

_____
ROD DIRIDON, JR.
City Clerk

BANC OF AMERICA PREFERRED FUNDING CORPORATION

By:_____
Eric Kosmin
Authorized Signatory

Draft

EXHIBIT A
FORM OF BOND

CITY OF SANTA CLARA, CALIFORNIA
SUBORDINATED ELECTRIC REVENUE BOND

$___000,000 June ___, 2014

The CITY OF SANTA CLARA, CALIFORNIA (the *"City"*), a municipal corporation and chartered city duly organized and existing under the Constitution and the laws of the State of California, for value received, hereby promises to pay (but only out of the Available Electric Revenues hereinafter referred to) to the order of Banc of America Preferred Funding Corporation (the *"Bank"*), at the office and address provided in the Agreement (hereinafter defined), (i) the aggregate unpaid principal amount of all Loans under the Agreement, not to exceed _____ MILLION DOLLARS ($____,000,000) in principal amount at any one time outstanding, made by the Bank to the City, payable in annual installments on July 1 of each calendar year, commencing July 1, 2016, and at such other times (if any), all as more fully specified in the Agreement, and (ii) interest on the unpaid principal amount of each Loan made by the Bank to the City, from the date of each such Loan until such principal amount is paid in full, at such per annum interest rate (not to exceed the Maximum Rate), and payable on January 1 and July 1 of each calendar year, and at such other times (if any), all as more fully specified in the Agreement, in lawful money of the United States of America, in federal or other immediately available funds, in like money and funds at such office and address.

The City promises to make all other payments owed by it under the Agreement. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Bond is subject to prepayment and redemption, all pursuant to the terms and under the conditions of the Loan Agreement dated as of June _, 2014 (as amended, the *"Agreement"*), between the City and the Bank, the terms of which are hereby incorporated by reference into this Bond. Reference is made to the Agreement for provisions as to the prepayment and redemption hereof. Reference is also made to the Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances and the acceleration of the maturity hereof based upon the happening of certain stated events. Among other things, the City shall reimburse the Bank, as the holder hereof, for reasonable costs and expenses incurred by the Bank in enforcing this Bond and the Agreement upon an Event of Default or Potential Default, including attorneys' fees and expenses as set out in Section 7.13 of the Agreement. This Bond shall be construed in accordance with and governed by the internal laws of the State of California.

The parties hereto, including the undersigned maker and all guarantors, endorsers and pledgors that may exist at any time with respect hereto, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Bond and assent to the extensions of the time of payment or forbearance or other indulgence without notice.

This Bond and the interest hereon, together with all obligations of the City secured by the Available Electric Revenues on a parity therewith, are payable from, and are secured by a charge

and lien on, the Available Electric Revenues (as more particularly defined in, and to the extent set forth in, the Agreement). The Available Electric Revenues constitute a trust fund for the security and payment of the interest on and principal of this Bond; but nevertheless out of Available Electric Revenues certain amounts may be applied for other purposes as provided in the Agreement.

The Bonds are limited obligations of the City and are payable, both as to principal and interest, and as to any premiums upon the redemption thereof, out of the Available Electric Revenues as provided in the Agreement. This Bond is not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the City or any of its income or receipts, except the Available Electric Revenues. The general fund of the City is not liable, and the credit or taxing power of the City is not pledged, for the payment of the Bonds or the interest thereon or any other obligation payable by the City under the Agreement. No registered owner of this Bond shall ever have the right to compel any exercise of the taxing power of the City to pay this Bond or the interest hereon or any other obligation payable by the City under the Agreement. Further reference is made to the Agreement for the provisions relating to the security of this Bond and the duties and obligations of the City.

It is hereby certified, recited and declared that all conditions, acts and things essential to the validity of this Bond exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

Made and executed at Santa Clara, California, as of the date and year first above written.

CITY OF SANTA CLARA

By: _____
City Manager

ATTEST:

By: _____
City Clerk

AUTHENTICATED:

By: _____
Director of Finance,
as fiscal agent and paying agent

SCHEDULE FOR SUBORDINATED ELECTRIC REVENUE BOND
DATED _____, 2014
BY CITY OF SANTA CLARA, CALIFORNIA
PAYABLE TO BANC OF AMERICA PREFERRED FUNDING CORPORATION

DATE OF LOAN	AMOUNT OF LOAN	MATURITY OF LOAN	DATES OF PRINCIPAL PAYMENT BY CITY	AMOUNT OF CITY PRINCIPAL PAYMENT	DATE OF TRANSFER	TRANSFEREE	NAME AND SIGNATURE OF BANK OFFICER
		07/01/2024					

Meeting Date: 5/20/14

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 15B

Date: May 15, 2014

To: Mayor and City Council

From: Council Officers & Elected Full Time Employees Performance/Salary Review Committee

Subject: Approval to Delegate Authority to the City Manager to Authorize and Grant Merit Increases to Elected Full Time Positions

EXECUTIVE SUMMARY:

The City Clerk and Chief of Police classifications are elected officials that are recognized as part of the Executive Staff of the City of Santa Clara. These two classifications are not represented by any bargaining unit, but are entitled to the same cost of living adjustments and other fringe benefits provided to positions in Unit 9 (Unclassified Miscellaneous Management), and Unit 9A (Unclassified Police Management) respectively, based on current Council policy.

The present policy for the Council Officers & Elected Full Time Employees Performance/Salary Review Committee (Committee) is to review and authorize merit increases to the full-time elected classifications. In order to create consistency with other Department Heads, the Committee recommends that this authority be delegated to the City Manager to set salary adjustments for the elected City Clerk and Chief of Police.

The City Council, however, will continue to establish value for the work performed by the City Auditor, which is an additional assignment of the City Clerk. Per the City Charter, the Council maintains the right to make salary adjustments, based on performance, when appropriate to the City Auditor function. The City Council will continue to maintain that authority.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

There are no disadvantages.

ECONOMIC/FISCAL IMPACT:

Adoption of this revised salary program will allow consistency to merit increases to all Department Heads of the City. This revision in practice will create equity amongst the Department Head classifications on the method of receiving merit increases. In addition, the process allows for a more streamlined approach in granting merit increases to the City Clerk and Chief of Police, in the same manner as all Department Heads of the City.

RECOMMENDATION:

That the Council delegate authority to the City Manager to authorize and grant merit increases to Elected Full-Time Positions.

Jamie Matthews, Chair Mayor	Pat Kolstad Vice Mayor	Lisa Gillmor Councilmember

Documents Related to this Report: None

5/20/14

17B

CLOSED SESSION REQUEST

City of Santa Clara, California

It is requested the **CITY COUNCIL OF THE CITY OF SANTA CLARA** meet in closed session on **Tuesday, June 10, 2014,** at **6:00 p.m.**, or as soon thereafter as the matter can be discussed, in the Council Conference Room located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to it/them:

☒ **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**
Pursuant to Gov. Code § 54956.9(a)
Vinod K. Sharma, et al. v. Successor Agency to the Redevelopment Agency of the City of Santa Clara, et al., Sacramento County Superior Court Case No. 34-2013-80001396

Date: May 16, 2014

RICHARD E. NOSKY, JR.
City Attorney

I:\COUNCIL\CLOSED SESSION AND SPECIAL MEETINGS\2014\06-10-14 Request City Exist Lit.doc