

AGREEMENT FOR A RECYCLED WATER INTERTIE

THIS AGREEMENT, made and entered into as of the ____ day of _____, 2016, by and between the SAN JOSE WATER COMPANY (“Company”), a California Corporation and the CITY OF MILPITAS (“City”), a Municipal Corporation. Company and the City are sometimes referred to herein individually as a party, and collectively as the parties.

WITNESSETH:

WHEREAS, the parties hereto are each engaged in the supply of recycled water in SANTA CLARA COUNTY in contiguous service areas; and

WHEREAS, the City of San Jose’s South Bay Water Recycling Program (SBWRP) provides both parties with recycled water and allows for interties between retailers; and

WHEREAS, during normal operations the parties believe it is a wise precaution to arrange for an interconnection of the recycled water system of Company with the recycled water system of the City to the end that recycled water can be supplied by either party on a normal basis; and

WHEREAS, the parties also believe it is a wise precaution and desire to arrange for an interconnection of the recycled water system of Company with the recycled water system of the City for use during emergency conditions (“Project”); and

WHEREAS, pursuant to the terms of this Agreement, the Company shall engage the services of a contractor (“Contractor”) to complete the Project; and

WHEREAS, the recycled water mains are owned by Company, City or SBWRP and the water is owned by SBWRP until it is delivered through customer meters; and

WHEREAS, the parties acknowledge that full compliance with the California Environmental Quality Act (“CEQA”) and all other applicable laws are a precondition to any construction of the Project; and

WHEREAS, the parties acknowledge and agree that nothing in this Agreement commits the City to approving or constructing the Project

NOW, THEREFORE, for and in consideration of the premises and of the provisions herein contained, it is agreed as follows:

1. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.
2. Term. This Agreement shall be effective as of the date first set forth above, and shall continue in effect until the Project is complete, as evidenced by the City's recording of a notice of completion for the Project. The intertie shall remain unless either party determines it is not desired by notices in accordance of section 19.
3. General Agreement to Cooperate. The parties agree to mutually cooperate in order to help ensure that the Project is successfully completed with minimum impact to both parties and the public.
4. Project. The recycled water system of Company will be connected to the recycled water system of the City at Trade Zone Boulevard and Ringwood Avenue in Santa Clara County. The interconnection will be between a ten-inch main of the Company and an eight-inch main of the City and will not be metered.
5. Cost Share. The cost of designing and construction the Project shall be borne equally by the parties.
6. Obligations of City.
 - a. The City shall reimburse Company for Project design and construction costs in an amount not to exceed Three Hundred Thousand Dollars (\$300,000). In the event Company expects Project design and construction costs to exceed the above amount, the Company shall notify the City of the anticipated cost overruns prior to accruing further costs and obtain the City's consent to increase the reimbursement amount set forth above, which shall be memorialized in a written amendment to this Agreement.
 - b. The City shall make payment of undisputed amounts within thirty (30) calendar days following the City's approval of a verified Project invoice from the Company.
 - c. The City shall grant, at no cost to Company or the Contractor an encroachment permit for work on the Project within the City and shall perform construction inspection of work on the Project within the City.

- d. The City shall perform CEQA for the Project.
- e. The City shall model the recycled water systems related to flow and capacity.

7. Obligations of Company.

- a. The Company shall be responsible for procuring all design and construction management services necessary, or provide staff resources necessary, to complete the Project. The Company shall be responsible for the process of selecting and contracting with a design firm and construction management firm, if necessary, and with a Contractor to complete the Project in compliance with all applicable local, state and federal laws including, without limitation, the California Public Contract Code and the California Labor Code, and shall additionally be responsible for obtaining all applicable environmental clearances (except CEQA) and permits necessary to complete the Project.
- b. Prior to invoices related to the Project being submitted for payment to the City, Company shall submit forms of such invoices to City for approval as to form. Such approval shall not be unreasonably withheld. The Company shall submit verified Project invoices to City within thirty (30) calendar days of completion of the Project detailing the City's portion of the Project design and construction costs.
- c. The Company shall provide the City an opportunity to review and approve all design documents generated for the Project, which the Company anticipates will be relied upon by the Contractor to construct the Project. Such approval shall not be unreasonably delayed or withheld.
- d. The Company shall obtain or shall require the Contractor to obtain all required permits and approvals for all Project work.
- e. The Company shall include, in its contract with the Contractor, a requirement that the Contractor include the City, its officials, officers, employees and agents as an additional insured on all insurance required by Company, a dual obligee on all bonds required by Company and as an indemnified party under said contract. Insurance shall be in the same amounts and with the same provisions as provided for the benefit of the

Company. The City shall be indemnified by the Contractor to the same extent as the Company.

- f. As between the City and the Company, the Company and its consultants shall be responsible for performing design reviews and construction inspection of the Project work to ensure conformance with Company standards and the construction contract including, but not limited to, the technical provisions of said contract. The Company shall allow City staff access to the Project site, at all times, to perform observation of any Project improvements. Such observation, if completed, shall be for the City's benefit only and shall not relieve the Company or the Contractor of any responsibility hereunder.
8. Time is of the Essence. Each party warrants that it shall make its best efforts to perform all obligations assigned to it related to the Project in such a manner as to allow the Project to progress as scheduled.
 9. Indemnification.
 - a. The City shall indemnify, defend and hold the Company, its directors, officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the City, its officials, officers, employees, agents, consultants or contractors in the performance of the City's obligations under this Agreement, including the payment of all reasonable attorneys' fees.
 - b. The Company shall indemnify, defend and hold the City, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or breach of law, or willful misconduct of the Company, its directors, officials, officers, employees, agents, consultants or contractors in the performance of the Company's obligations under this Agreement, including the payment of all reasonable attorneys' fees.

- c. The indemnification provisions set forth herein shall survive any expiration or termination of this Agreement.
10. Force majeure. The failure of performance by either party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the parties); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the parties.
11. Amendments. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
12. Assignment of Cooperative Agreement. Neither party may assign or transfer its respective rights or obligations under this Agreement without the express written consent of the other party. Any purported assignment or transfer by one party without the express written consent of the other party shall be null and void and of no force or effect.
13. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either party shall be deemed to waive or render unnecessary such party's consent to or approval of any subsequent act of the other party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
14. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared

invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

15. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.
16. Law; Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Santa Clara, State of California.
17. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.
18. No Dedication. Nothing herein shall be deemed to constitute a dedication of the recycled water supply of either party to service the territory of the other party or to constitute a commitment to supply recycled water to the other party.
19. Notices. Any notice which it is herein provided may or shall be given by either party to the other shall be delivered to the party to whom such notice is given at the following respective addresses:

Director of Engineering
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

Director of Engineering
San Jose Water Company
110 West Taylor Street
San Jose, California 95110

Either party by notice given as hereinbefore provided may change the address to which notice shall thereafter be delivered.

20. Approval by Entities With Jurisdiction. This Agreement shall be subject to approval of the Milpitas City Council. City acknowledges and agrees that the Company is regulated by the California Public Utilities Commission (“Commission”) and that this Agreement shall at all times be subject to such changes or modifications as the Commission may from time to time direct or require in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

CITY OF MILPITAS

By _____
Thomas C. Williams, City Manager

Approved As To Content

Steven J. Machida, Director of Engineering

Approved As To Form

Christopher J. Diaz, City Attorney

SAN JOSE WATER COMPANY

By _____
Craig S. Giordano, Vice President of
Engineering