
APPENDIX G

WATER SUPPLY EVALUATION



Water Supply Evaluation Study for the 965 Weeks Development

City of East Palo Alto

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Water Supply Assessment
965 Weeks Development
City of East Palo Alto

TABLE OF CONTENTS

1 INTRODUCTION..... 1

2 GENERAL REQUIREMENTS FOR THE PREPARATION OF A WATER SUPPLY ASSESSMENT..... 3

2.1 Applicability of Senate Bill 610 to the Project 3

2.2 Responsibility for Preparation of the Water Supply Assessment..... 3

2.3 Components of a Water Supply Assessment..... 4

3 PROJECT DESCRIPTION 5

4 PROJECT WATER DEMAND 6

4.1 Indoor Water Use 6

4.2 Outdoor Water Use..... 7

4.3 Distribution System Losses 7

4.4 Total Project Water Demand 8

5 CITY OF EAST PALO ALTO WATER DEMAND 9

5.1 Current and Historical Potable Water Demand Within the City of East Palo Alto 9

5.2 Water Demand Projections, 2015 UWMP 10

5.3 Planned Development Projects within the City of East Palo Alto 10

5.4 Total Projected Water Demand for the City of East Palo Alto 10

6 CITY OF EAST PALO ALTO WATER SUPPLY 12

6.1 Identification of Water Supply Rights..... 12

6.1.1 SFPUC Regional Water System 12

6.1.2 Groundwater Supply 17

6.2 Total Potable Supply in Normal, Single Dry, and Multiple Dry Years 20

7 COMPARISON OF SUPPLY AND DEMAND 22

8 CONCLUSIONS..... 23

9 REFERENCES..... 24

Water Supply Assessment
965 Weeks Development
City of East Palo Alto

TABLE OF CONTENTS (CONTINUED)

FIGURES

- Figure 1 Project Location
- Figure 2 Project Setting

TABLES

- Table 1 Summary of Estimated Annual Project Water Demand
- Table 2 Estimated Project Indoor Water Demand
- Table 3 Estimated Project Outdoor Water Demand
- Table 4 Historical Potable Water Demand for the City of East Palo Alto
- Table 5 Projected Future Potable Water Demand of the City of East Palo Alto
- Table 6 Total Projected Future Water Demand of the City of East Palo Alto Inclusive of the Project Demand
- Table 7 Historical Potable Water Supply for the City of East Palo Alto
- Table 8 Imported Water Supply for the City of East Palo Alto in Dry Year Scenarios
- Table 9 Normal Year Water Supply and Demand for the City of East Palo Alto
- Table 10 Comparison of Single Dry Year Water Supply and Demand for the City of East Palo Alto
- Table 11 Comparison of Multiple Dry Year Water Supply and Demand for the City of East Palo Alto

APPENDICES

- Appendix A Water Supply Agreements

1 INTRODUCTION

EKI Environment & Water (“EKI”) is pleased to present this water supply evaluation study (“WSE Study”) in support of the proposed multi-family residential development located at 965 Weeks Street in the City of East Palo Alto, California (“Project”; Figure 1). The proposed Project consists of 136 units of multi-family residential (“MFR”) units on an approximately 2.5-acre site. The proposed Project is located within the City of East Palo Alto (“City”) water service area and the City will be the water service provider for the proposed Project.

As described in Section 2, a Water Supply Assessment (“WSA”) is not required for the proposed Project pursuant to the California Water Code (“CWC” or “Water Code”) §10910-10915. However, pursuant to Policy 2.4 under Goal ISF-2 of the City’s 2016 General Plan Update¹, the City has requested that the Project proponent prepare a WSE Study for the proposed Project that is modeled after and in general conformance with WSA requirements and the California Department of Water Resources’ (“DWR’s”) *Guidebook for Implementation of Senate Bill 610 and Senate Bill 221 of 2001: To Assist Water Suppliers, Cities, and Counties in Integrating Water and Land Use Planning*, dated 8 October 2003. The text of specific sub-sections of the Water Code is included in indented and italicized font at the beginning of specific sections of this WSE Study. The information presented in those respective sections, and the associated tables and figures, respond directly to Water Code requirements.

Water for the proposed Project will be supplied by the City of East Palo Alto. The purpose of this WSE Study is to evaluate whether the City has sufficient water supply to meet the current and planned water demands within its service area, including the demands associated with the proposed Project, during normal and dry hydrologic years over a 20-year time horizon. More specifically, this WSA includes:

- A summary of the WSA requirements articulated in Water Code §10910-10912 and a description of how they apply to the proposed Project;
- A description and analysis of the current and projected future water demands of the proposed Project through the year 2040;
- A description and analysis of the historical, current, and projected future water demands for the City’s service area through the year 2040;
- A description and analysis of the current and projected future water supplies for the City’s service area through the year 2040; and
- A comparison of the water supplies and demands for the City’s service area, including the projected water demands associated with the proposed Project.

¹ Require new or intensified development to demonstrate that adequate water is available before project approval. Before new or intensified development projects are approved, the development proponent must provide the City with enforceable, verifiable proof that adequate water supply exists to supply the new or intensified development.

The information contained in this WSE Study is based primarily on the City's 2015 Urban Water Management Plan ("UWMP"; EKI Environment & Water, 2016), except where updated with relevant water supply reliability and other information provided by the San Francisco Public Utilities Commission ("SFPUC") and the Bay Area Water Supply and Conservation Agency ("BAWSCA").

This WSE Study has been prepared for the sole use and benefit of the City of East Palo Alto. Unless specifically authorized in writing in an agreement acceptable to EKI, reliance on this WSE Study by any other entity or third party is not permitted or authorized.

This WSE Study concludes that the proposed Project is: (1) within the projected growth anticipated by the City's 2015 UWMP; and (2) the City expects to be able to meet all future demands within its existing service area and those associated with the proposed Project.

2 GENERAL REQUIREMENTS FOR THE PREPARATION OF A WATER SUPPLY ASSESSMENT

The purpose of this section is to outline what types of projects require the preparation of a WSA, who is responsible for its preparation, and the necessary components of a WSA.

2.1 Applicability of Senate Bill 610 to the Project

Water Code Section 10910

(a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part.

Water Code Section 10912

For the purposes of this part, the following terms have the following meanings:

(a) "Project" means any of the following:

- (1) A proposed residential development of more than 500 dwelling units.*
- (2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.*
- (3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.*
- (4) A proposed hotel or motel, or both, having more than 500 rooms.*
- (5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.*
- (6) A mixed-use project that includes one or more of the projects specified in this subdivision.*
- (7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.*

The approximately 2.5-acre proposed Project Site is located at 965 Weeks Street in the City of East Palo Alto (Figure 1 and Figure 2), which is located within San Mateo County. Based on information provided by the Project Proponent, the proposed Project consists of a new residential development that includes 136 MFR dwelling units. As such, the Project does not strictly meet the project definitions included in Water Code §10910(a) and 10912(a)(3). However, the City has determined that the proposed Project is subject to the California Environmental Quality Act ("CEQA") and is voluntarily preparing a WSE Study evaluation as part of the Environmental Impact Report ("EIR") that is modeled after, and in conformance with, all WSA requirements.

2.2 Responsibility for Preparation of the Water Supply Assessment

Water Code Section 10910

(b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code,

shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site.

Water for the proposed Project will be supplied by the City and therefore, in accordance with Water Code §10910(b), the City is the entity responsible for completing a Project-specific WSA. As noted previously, a WSA is not required for the proposed Project by the Water Code. However, the City has voluntarily elected to prepare this WSE Study for the proposed Project that is modeled after, and in conformance with, all WSA requirements.

2.3 Components of a Water Supply Assessment

Water Code Section 10910

(c) (4) If the city or county is required to comply with this part pursuant to subdivision (b), the water supply assessment for the project shall include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses, including agricultural and manufacturing uses.

As listed above in Water Code §10910(c)(4), the primary purpose of a WSA is to evaluate whether sufficient water supply is available to meet all future demands within the water supplier's service area, including those associated with the proposed Project, during normal and dry hydrologic years for a 20-year time horizon. Therefore, the following information is included in this WSE Study:

- A description and analysis of the current and projected future water demands of the proposed Project through the year 2040;
- A description and analysis of the historical, current, and projected future water demands for the City's service area through the year 2040;
- A description and analysis of the current and projected future water supplies for the City's service area through the year 2040; and
- A comparison of the water supplies and demands for the City's service area, including the projected water demands and supplies associated with the proposed Project.

3 PROJECT DESCRIPTION

Based on the current development plan provided by the Project proponent, the approximately 2.5-acre proposed development will consist of: (1) 136 MFR units, including a mix of studio, one-, two-, three-, and four-bedroom units; and (2) 34,000 square feet of landscape area.² For the purposes of this WSA, it is assumed that all Project water demands will be realized between 2020 and 2025.

As shown on Figures 1 and 2, the proposed Project site is currently undeveloped. The historical water demand at the site has been zero since 2006.^{3,4} The proposed Project is located within the City of East Palo Alto and potable water service to the proposed Project will be provided by the City of East Palo Alto. Given that the proposed Project site is currently undeveloped and is not currently being supplied water, the proposed Project development will result in an increase in water demand at the proposed Project site.

² Landscape acreage provided by EMC Planning Group via email on 28 August 2019.

³ City staff confirmed that the meter onsite has been pulled and the historical demand of the Project site has been zero since 2006 via email on 26 August 2019.

⁴ The aerial photographs used on Figures 1 and 2 are default aerial photographs provided by ESRI, and the dates are unknown. These photographs may be dated prior to 2006.

4 PROJECT WATER DEMAND

The City of East Palo Alto has adopted green building standards and water efficient landscaping ordinances consistent with previous versions of the CalGreen building standards and the California Model Water Efficient Landscape Ordinance (“MWEL”). As part of state requirements, all new developments must comply with these efficiency standards. As such, the proposed Project development is expected to include a number of water-efficient features, including, but not limited to:

- Use of low-flow lavatory faucets, kitchen faucets, toilets, and urinals in accordance with CalGreen Code; and
- Inclusion of low-water use landscaping and high-efficiency irrigation systems to minimize outdoor water use in accordance with MWEL.

As describe below, average annual water demand for the proposed Project was estimated based on (1) information provided by the Project proponent and the City of East Palo Alto, (2) the application of well-established methodologies for estimating water use; and (3) assumptions regarding water efficiency for certain end uses based on conformance of the City requirements described above. Table 1 includes a summary of water demand projections associated with the proposed land uses at Project completion.

4.1 Indoor Water Use

As shown in Table 2, Project indoor water use was estimated as a sum of water use associated with various residential end uses, including toilets, showers, clothes washers, dishwashers, and faucets, as well as typical household leakage. The estimate is based on the following information and assumptions:

- Fixture and appliance flow rates based on the CalGreen Code;
- Water use rates by fixture or appliance (WRF, 2016); and
- Estimate of number of occupants (i.e. residents) provided by Project proponent.

The Water Research Foundation’s *Residential End Uses Water, Version 2* (WRF, 2016) study collected and analyzed data on indoor end uses of water in single-family homes across North America. The study published statistics on water use by each fixture or appliance as well as frequencies and durations of use. One of the study’s findings was that although significant reductions in water use per capita were observed across residential indoor end uses, fixture and appliance use frequencies and durations generally remained similar to those observed during WRF’s 1999 residential end use assessment. These water use pattern statistics were applied to water efficient fixture or appliance flow rates specified in the City’s water efficiency requirements.

Based upon the above methodology and assumptions, the annual residential indoor water use was estimated to be 19,877 gallon per day (“gpd”), or 22.3 acre-feet per year (“AFY”). New state

requirements (AB 1668/SB 606) for urban water use objectives include as a component of the overall objective a metric of 55 gpcd indoor residential water use (inclusive of single family residential (“SFR”) and MFR users), with the likelihood that this number will decrease in the future.⁵ The Project’s per-occupant indoor water use averages to 45 gallons per capita per day (“gpcd”), which is well within the new residential water use metric. Current residential per capita water use within the City of East Palo Alto is approximately 45 gpcd⁶. Therefore, the indoor water use estimated for the Project is considered conservative and reasonable with respect to current water use in the City.

4.2 Outdoor Water Use

Outdoor water use (i.e. landscape water use) was estimated using the landscape irrigation demand model described in MWEL0. Pursuant to MWEL0, annual Estimated Total Water Use (“ETWU”) is calculated based on the regional reference evapotranspiration rate (“ETo”), an evaporation adjustment factor, and the total landscape area.

Based on information provided by the Project proponent, the current development plans include about 34,000 square feet of landscape area. Water demand for the irrigated area, as shown in Table 3, is estimated based on an irrigation efficiency of 75% (assuming spray head irrigation) and an average plant factor of 0.4 (which is associated with low- to moderate- water use plants). Based on these assumptions, the annual outdoor water demand associated with the Project is estimated to be 1,332 gpd, or 1.5 AFY.

4.3 Distribution System Losses

The City of East Palo Alto’s 2015 UWMP (EKI, 2016) has used historical unaccounted-for-water⁷ as a proxy to estimate future distribution loss. The City’s unaccounted-for-water varied from 2011 to 2015. Excluding the notable spike in 2014, likely due to metering inaccuracies, the average unaccounted-for-water observed between 2011 and 2015 was 8.9% of total deliveries. As the Project is anticipated to connect to the City’s existing water distribution system, it is conservatively assumed that additional distribution system losses associated the proposed Project are 8.9% of the total water used by the Project. Table 1 shows that the annual distribution system losses for this Project, which are estimated to be 1,888 gpd, or 2.1 AFY.

⁵ Beginning in 2023, urban water suppliers will be required to calculate an urban water use objective for their service area and report water use relative to this objective on an annual basis. The urban water use objective will be calculated based on water use efficiency objectives developed for residential indoor, outdoor, and water loss components.

⁶ As reported to the State Water Resources Control Board Water Conservation Portal for 2018.

⁷ Unaccounted-for-water includes water used for system flushing, leak repair flushing, hydrant leaks, street sweeping, and distribution system loss.

4.4 Total Project Water Demand

Based on the above methodologies and assumptions, the total annual water demand for the proposed Project at full buildout and occupancy is estimated to be 23,096 gpd, or 26 AFY. Full buildout and occupancy of the proposed Project is expected to occur between 2020 and 2025. The Project's per-occupant water demand (inclusive of indoor use, outdoor use, and system losses) is estimated to be approximately 52 gpcd, which is within the residential water demand factor assumed for future developments in the 2015 UWMP of 60 gpcd.

5 CITY OF EAST PALO ALTO WATER DEMAND

Water Code Section 10910

- (c) (1) The city or county, at the time it makes the determination required under Section 21080.1 of the Public Resources Code, shall request each public water system identified pursuant to subdivision (b) to determine whether the projected water demand associated with a proposed project was included as part of the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with Section 10610).*
- (c) (2) If the projected water demand associated with the proposed project was accounted for in the most recently adopted urban water management plan, the public water system may incorporate the requested information from the urban water management plan in preparing the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g).*
- (c) (3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.*

As part of the development of its 2015 UWMP, the City of East Palo Alto estimated projected future water demand for the City's service area. In accordance with the UWMP Act (Water Code §10610-10656), the City of East Palo Alto projected future water demand is estimated in five year increments, between the years 2020 and 2040, and is subdivided between the following four customer sectors or use types: (1) residential water use, (2) non-residential water use, (3) raw water, and (4) unaccounted-for water.

The City's 2015 UWMP was developed in consideration of the City's General Plan Update WSA dated January 2015. Because the Project is consistent with the City's General Plan Update and the Ravenswood/4 Corners Transit-Oriented Development Specific Plan, it is reasonable to assume that projected water demand associated with the proposed Project is accounted for in the City's 2015 UWMP.

5.1 Current and Historical Potable Water Demand Within the City of East Palo Alto

Historical potable water demand within the City of East Palo Alto from 2005 to 2018 is summarized in Table 4. As shown in Table 4, the City's historical potable water demand has fluctuated between 1,725 AFY and 2,321 AFY over this period, corresponding to the economic cycle as well as the recent historic drought and mandatory state-wide water use restrictions. Following a period of water demand increase between 2011 and 2013, which was likely due to the economic rebound after the 2007-2009 recession, the City observed a water demand decrease of 27.5% between 2013 and 2015, due to substantial water use cutbacks during the recent drought. The total water use has not fully rebounded back to pre-drought levels since, and has averaged to 1,759 AFY between 2015 and 2018.

The majority of the City's water demand is associated with the residential sector and represented 58% of its total water demand in 2015. The remainder of the 2015 water demand was split between the commercial sector (30%), institutional/government/other sector (3.5%), industrial sector (1.0%), and unaccounted-for-water (6.8%), which includes system flushing, leak repair flushing, and street sweeping, as well as losses due to leaks.

5.2 Water Demand Projections, 2015 UWMP

Projected future potable water demands for residential and non-residential sectors within the City of East Palo Alto service area were estimated in the 2015 UWMP by applying unit water demand factors developed based on the City's 2010 water demand⁸ to population predictions from the General Plan Update and job growth predictions from the City/County Association of Governments traffic model. The unaccounted-for-water demand in the 2015 UWMP were assumed to be 8.9% of projected residential and non-residential demand, which was based on the average value from 2011 to 2015, excluding 2014 due to metering inaccuracies.

Projected potable water demands within the City's service area are provided in Table 5 in five-year increments between 2020 and 2040. Projected annual potable water demand according to the 2015 UMWP is anticipated to increase to 2,249 AFY by 2020 and 3,415 AFY by 2040, the latter representing a 94% increase relative to the observed 2015 water use of 1,759 AFY.

5.3 Planned Development Projects within the City of East Palo Alto

No major development projects of sufficient size to require a WSA have been approved within the City of East Palo Alto service area since the 2015 UWMP. As discussed in Section 6.1.1.1 below, due to its historic water supply limitations, the City imposed a temporary moratorium on new or expanded water connections in 2016 and lifted the moratorium in July 2018.

5.4 Total Projected Water Demand for the City of East Palo Alto

As discussed above, the City's water demand significantly decreased in response to the recent historic drought and has remained at a similar demand levels as 2015. This indicates that some drought response actions undertaken by the City and customers have resulted in permanent water savings, and that a full rebound to pre-drought (i.e., 2013) water use for existing service connections is unlikely. Therefore, for the purposes of this study, we have assumed that the water demand of existing service connections will continue to rebound slightly to the highest annual water use between the past five-years (i.e. 2014 through 2018).

⁸ The residential water demand factor is 60 gpcd and the non-residential water demand is 133 gpcd, and these numbers were determined by dividing the total water demand by the total population and total employment, respectively.

As shown in Table 6, the 2015 UWMP estimated that there will be an increase in City-wide water demand of 1,556 AFY by 2040 relative to the water demand of existing service connections. As shown in Table 6, the projected water demands associated with the proposed Project will be 26 AFY by 2025, leaving approximately 1,530 AFY or 98% of the demand growth assumed in the 2015 UWMP available for other development through 2040. Therefore, the water demands of the proposed Project fall well within the increased demand projected in the 2015 UWMP.

6 CITY OF EAST PALO ALTO WATER SUPPLY

This section identifies the City of East Palo Alto's water supplies and discusses the vulnerability of the various supplies to drought and other factors affecting water supply reliability.

6.1 Identification of Water Supply Rights

Water Code Section 10910

(d) (1) The assessment required by this section shall include an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), under the existing water supply entitlements, water rights, or water service contracts.

Pursuant to Water Code §10910(d)(1), a WSA is required to include identification of all water supply entitlements, water rights, and water service contracts relevant to the identified water supply for the proposed Project. In accordance with these requirements, this WSA includes a summary of the City's water supply sources and the agreements between the City and its wholesale supplier, the SFPUC, and other parties. Documentation of these sources and agreements are provided in Appendix A.

6.1.1 SFPUC Regional Water System

6.1.1.1 RWS Supply Sources and Allocation

As shown in Table 7, the City of East Palo Alto purchases 100% of its potable water supply from the City and the County of San Francisco's Regional Water System ("RWS"), which is operated by the SFPUC.

The RWS supply originates predominantly from the Sierra Nevada mountains but also includes treated water produced by the SFPUC from its local watersheds and facilities in Alameda and San Mateo Counties. Approximately 85% of the RWS supply comes from the Tuolumne River via the Hetch-Hetchy Reservoir and aqueducts. The remaining 15% comes from local watersheds and the San Antonio, Calaveras, Crystal Springs, Pilarcitos, and San Andreas Reservoirs.

Prior to its recent acquisition of water transfers, the City of East Palo Alto historically had a permanent Individual Supply Guarantees ("ISG")⁹ of 1.963 million gallons per day ("MGD"), or

⁹ San Francisco has a perpetual commitment (Supply Assurance) to deliver 184 MGD to the 24 permanent wholesale customers collectively. San Jose and Santa Clara are not included in the Supply Assurance commitment and each has temporary and interruptible water supply contracts with San Francisco. The Supply Assurance is allocated among the 24 permanent wholesale customers through Individual Supply Guarantees (ISG), which represent each wholesale customer's allocation of the 184 MGD Supply Assurance.

approximately 2,199 AFY, from SFPUC. Per the 2015 UWMP, the City purchased between 75% and 105% of its ISG during 2011-2015. The normal year water supply has restricted the City's ability to approve new development, especially its ability to develop affordable housing and achieve economic development goals. As a result of this supply shortfall, the City adopted an Urgency Ordinance (No. 399) in July 2016 that temporarily prohibited new or expanded water connections while the City actively pursued additional water supplies.

Since completion of the 2015 UWMP, the City was able to obtain an additional ISG allocation of 1.0 MGD from the City of Mountain View (City of East Palo Alto, 2017) and an ISG allocation of 0.5 MGD from the City of Palo Alto (City of East Palo Alto, 2018). Both Mountain View and Palo Alto are permanent wholesale customers of SFPUC. These ISG transfers to East Palo Alto are permanent, and included the transfer of all right, title, and interest associated with the ISGs pursuant to the Water Supply Agreement between SFPUC and wholesale customers and is considered to be additional to the City of East Palo Alto's previous ISG of 1.963 MGD. The City's lifted its moratorium on new or expanded connections in June 2018.

As a result of these water rights transfers, the City now has a total ISG of 3.463 MGD or 3,879 AFY.

6.1.1.2 RWS Supply Reliability

The RWS historically has met demand in its service area in all year types. Factors that will affect future reliability of the RWS are discussed below.

The water available to SFPUC's retail and wholesale customers from the RWS is constrained by hydrology, physical facilities, and the institutional parameters that allocate the water supply of the Tuolumne River (EKI, 2016). In addition, statewide regulations and other factors can impact the system reliability.

For example, the California Bay-Delta Plan ("Plan") is currently being updated through two separate Plan amendment processes. In December 2018, State Water Board Resolution No. 2018-0059 was adopted, establishing flow objectives for the Lower San Joaquin River flow and revising southern Delta salinity objectives (DWR, 2019a). Currently, the State Water Resources Control Board ("SWRCB") is considering Plan amendments focused on the Sacramento River, and Delta flows, and cold water, Delta outflows, and interior Delta flows, which includes proposed limitations on the Tuolumne River and implications for the RWS (DWR, 2019b).

Based on an analysis by the BAWSCA, if the current Draft Final Bay-Delta Plan Amendment (July 2018) is implemented, the proposed unimpaired flow volumes would significantly reduce water supply available through the RWS during future drought conditions, and BAWSCA member agencies (including the City) would be required to reduce their water use by as much as 50% during drought years (BAWSCA, 2018).

In a letter recently provided by SFPUC to BAWSCA, SFPUC provided a detailed discussion of the factors contributing to the significant uncertainties surrounding the Bay-Delta Plan Amendment (SFPUC, 2019b). This discussion is excerpted below:

The SWRCB has stated that it intends to implement the Bay-Delta Plan Amendment on the Tuolumne River by the year 2022, assuming all required approvals are obtained by that time. But implementation of the Plan Amendment is uncertain for several reasons. First, under the Clean Water Act, the United States Environmental Protection Agency (U.S. EPA) must approve the water quality standards identified in the Plan Amendment within 90 days from the date the approval request is received. It is uncertain whether the U.S. EPA will approve or disapprove the water quality standards. Furthermore, the determination could result in litigation.

Second, since adoption of the Bay-Delta Plan Amendment, over a dozen lawsuits have been filed in both state and federal court, challenging the SWRCB's adoption of the Bay-Delta Plan Amendment, including a legal challenge filed by the federal government, at the request of the U.S. Department of Interior, Bureau of Reclamation. That litigation is in the early stage and there have been no dispositive court rulings as of this date.

Third, the Bay-Delta Plan Amendment is not self-implementing and does not allocate responsibility for meeting its new flow requirements to the SFPUC or any other water rights holders. Rather, the Plan Amendment merely provides a regulatory framework for flow allocation, which must be accomplished by other regulatory and/or adjudicatory proceedings, such as a comprehensive water rights adjudication or, in the case of the Tuolumne River, the 401 certification process in the Federal Energy Regulatory Commission's relicensing proceeding for Don Pedro Dam. The license amendment process is currently expected to be completed in the 2022-23 timeframe. This process and the other regulatory and/or adjudicatory proceedings would likely face legal challenges and have lengthy timelines, and quite possibly could result in a different assignment of flow responsibility (and therefore a different water supply impact on the SFPUC).

Fourth, in recognition of the obstacles to implementation of the Bay-Delta Plan Amendment, SWRCB Resolution No. 2018-0059 adopting the Bay-Delta Plan Amendment directed staff to help complete a "Delta watershed-wide agreement, including potential flow measures for the Tuolumne River" by March 1, 2019, and to incorporate such agreements as an "alternative" for a future amendment to the Bay-Delta Plan to be presented to the SWRCB "as early as possible after December 1, 2019." In accordance with the SWRCB's instruction, on March 1, 2019, SFPUC, in partnership with other key stakeholders, submitted a proposed project description for the Tuolumne River that could be the basis for a voluntary substitute agreement with the SWRCB ("March 1st Proposed Voluntary Agreement"). On March 26, 2019, the Commission adopted Resolution No. 19-

0057 to support SFPUC's participation in the Voluntary Agreement negotiation process. To date, those negotiations are ongoing under the California Natural Resources Agency and the leadership of the Newsom administration.³ The negotiations for a voluntary agreement have made significant progress since an initial framework was presented to the SWRCB on December 12, 2018. The package submitted on March 1, 2019 is the product of renewed discussions since Governor Newsom took office. While significant work remains, the package represents an important step forward in bringing together diverse California water interests.

For all these reasons, whether and when the Bay-Delta Plan Amendment will be implemented, and how those amendments if implemented will affect the SFPUC's water supply is currently uncertain and possibly speculative.

[³ California Natural Resources Agency. "Voluntary Agreements to Improve Habitat and Flow in the Delta and its Watersheds." <http://resources.ca.gov/voluntary-agreements/>. Accessed April 8, 2019.]

In addition, although SFPUC and SWRCB are undergoing voluntary settlement agreement negotiations, the details of the proposed voluntary settlement agreement alternative are not currently public. The ultimate results of these negotiations and consequent impacts on future drought supply availability for the RWS are unclear. Given these significant uncertainties, these potential impacts to RWS supply reliability in dry years are acknowledged, but cannot be quantified at this point.

6.1.1.3 Efforts to Increase RWS Supply Reliability

The SFPUC's Water Supply Improvement Program ("WSIP") and its Water Management Action Plan ("Water MAP") articulate the SFPUC's goals and objectives to improve the delivery reliability of the RWS, including water supply reliability.

The WSIP program goal is to improve the SFPUC's ability to reliably meet its retail and wholesale customer water needs in non-drought and drought periods. Key objectives as of 21 December 2018 include: (a) meeting average annual water demand of 265 MGD from the SFPUC watersheds for retail and wholesale customers during non-drought years for system demands through 2028; (b) meeting dry-year delivery needs through 2028 while limiting rationing to a maximum 20% system-wide reduction in water service during extended droughts; (c) diversifying water supply options during non-drought and drought periods; and (d) improving use of new water sources and drought management, including groundwater, recycled water, conservation, and transfers (SFPUC, 2018).

The anticipated completion date of WSIP has been postponed to 30 December 2021 in the amended Agreement (SFPUC, 2018). As of December 2018, WSIP regional projects are 97% complete and the local projects are also near completion (SFPUC, 2019a).

The SFPUC also developed a Water MAP in 2016 to provide the information necessary to begin developing a water supply program for the 2019 to 2040 planning horizon. The SFPUC intends that the Water MAP will guide its efforts to continue to meet its commitments and responsibilities to its customers, including the BAWSCA member agencies (BAWSCA, 2017). The Water MAP was developed with consideration of the 2018 SFPUC's supply decisions (now postponed to 2028; as discussed above), as well as recent changes to instream flow requirements and customer demand projections. The Water MAP has identified water supply needs on the RWS by 2040 and prioritized those needs in the following order:

1. Meeting existing obligations to existing permanent customers (3.5 MGD).
2. New supply in order to make the City of San Jose a permanent customer of the SFPUC (Up to 9.5 MGD).
3. New supply in order to make the City of Santa Clara a permanent customer of the SFPUC (Up to 5.0 MGD).
4. New supply to meet the City of East Palo Alto's projected needs above its ISG (Up to 1.5 MGD).¹⁰

Through implementation of its Long-Term Water Supply Reliability Strategy, BAWSCA is also actively evaluating opportunities to increase the supply reliability of the RWS (BAWSCA, 2015).

6.1.1.4 Tier One and Tier Two Water Shortage Allocation

The Agreement includes a Water Shortage Allocation Plan ("WSAP") that allocates water from the RWS to retail and wholesale customers during system-wide shortages of 20% or less (the Tier One Plan). As described in detail in the 2015 UWMP, the WSAP has two components:

1. The Tier One Plan, which allocates water between San Francisco and the Wholesale Customers collectively; and
2. The Tier Two Plan, which allocates the collective wholesale customer share among the Wholesale Customers.

Dry year supply reliability projections provided in the 2015 UWMP are based on application of the WSAP as described in the 2009 Agreement (pre-amendment) and the 2010 BAWSCA Tier Two Drought Implementation Plan ("DRIP") (EKI, 2016). However, various factors have changed since completion of these estimates, including a revision to the WSAP allocation formulas in the recent amendment to the Agreement that favors the City of East Palo Alto and the other Wholesale Customers. Specifically, analysis by BAWSCA and the SFPUC demonstrated that if the WSAP had been applied during the 2014-2017 drought, the SFPUC retail customers would have actually received a *positive allocation* of water, whereas the Wholesale Customers would have had to cut back significantly. As such, the recent amended Agreement revised the Tier One Plan and imposed a minimum 5% conservation on SFPUC retail customers during droughts, which then

¹⁰ As discussed above, the City has acquired 1.5 MGD of additional water supply through ISG transfers with other SFPUC wholesale customers.

frees up additional water for the Wholesale Customers (SFPUC, 2018). BAWSCA is planning to work with the Wholesale Customers to revise the Tier Two Plan in the near future.

Additionally, as discussed above in Section 6.1.1.1, the City has recently secured two water rights transfers that have significantly increased the City's supply over the amount available at the time of development of the 2015 UWMP. Due to the ongoing WSAP revisions, the amount of dry year supply reliability for the City cannot be quantified. However, for the purposes of this study, we have provided a preliminary estimate, discussed below in Section 6.2.

6.1.2 Groundwater Supply

Water Code Section 10910

(f) If a water supply for a proposed project includes groundwater, the following additional information shall be included in the water supply assessment:

(1) A review of any information contained in the urban water management plan relevant to the identified water supply for the proposed project.

(2) (A) A description of any groundwater basin or basins from which the proposed project will be supplied.

(B) For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), has the legal right to pump under the order or decree.

(C) For a basin that has not been adjudicated that is a basin designated as high- or medium-priority pursuant to Section 10722.4, information regarding the following:

(i) Whether the department has identified the basin as being subject to critical conditions of overdraft pursuant to Section 12924.

(ii) If a groundwater sustainability agency has adopted a groundwater sustainability plan or has an approved alternative, a copy of that alternative or plan.

(D) For a basin that has not been adjudicated that is a basin designated as low- or very low priority pursuant to Section 10722.4, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current bulletin of the department that characterizes the condition of the groundwater basin, and a detailed description by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), of the efforts being undertaken in the basin or basins to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the amount and location of groundwater pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), for the past five years from any groundwater basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

- (4) *A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), from any basin from which the proposed project will be supplied. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.*
- (5) *An analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project. A water supply assessment shall not be required to include the information required by this paragraph if the public water system determines, as part of the review required by paragraph (1), that the sufficiency of groundwater necessary to meet the initial and projected water demand associated with the project was addressed in the description and analysis required by paragraph (4) of subdivision (b) of Section 10631.*

The City has not supplied any of its potable water demands with groundwater to date. However, the City has been acting to expand groundwater production to meet potable water demands and provide emergency water supply within the City's service area.

Since completion of the 2015 UWMP, the City has completed rehabilitation of the Gloria Way Well and construction of the Gloria Way well treatment system. The Gloria Way well and treatment system are currently undergoing a start-up phase and have not yet contributed to the City's potable water supply; however, it is anticipated that the well system will be in full operation in the near future. In addition, the City is in the process of developing a second well, known as the Pad D well. While groundwater is not currently used as a potable supply with the construction and operation of these wells, groundwater will anticipate be used to supplement the RWS supply and serve as a drought-resilient supply source for the City.

6.1.2.1 Groundwater Basin Description

The City overlies the southern end of the San Mateo Plain Groundwater Subbasin of the Santa Clara Valley Groundwater Basin ("Basin"; DWR Basin 2-9.03). The Basin encompasses approximately 37,708 acres and is located along the eastern edge of the San Francisco Peninsula between San Francisco Bay and the Santa Cruz Mountains. The Basin is part of a larger regional groundwater system that includes groundwater basins in Alameda and Santa Clara Counties. A bedrock high delineates the northern end of the Basin (near Hillsborough and San Mateo) and the southern end of the Basin is generally defined by the San Mateo-Santa Clara County line, which is coincident with San Francisquito Creek. Small portions of the Basin extend into Santa Clara County.

The Basin is not adjudicated, nor has it been found by DWR to be in a condition of overdraft. The Basin was ranked as a Very Low priority basin by DWR's SGMA Prioritization Process (DWR, 2019c) and is therefore not subject to the requirements of the Sustainable Groundwater Management Act ("SGMA"). The Basin was ranked as Very Low priority due to the limited current use of groundwater within the Basin, as the primary water supply source used in the Basin since the 1960s has been imported water from the RWS. Groundwater levels have increased since the

1960s and the Basin is currently in a relatively full and stable condition (EKI, Todd Groundwater, HydroFocus, 2018.).

6.1.2.2 Groundwater Management

The City has taken individual and collective action in recent years to facilitate groundwater management in the Basin. As discussed in the 2015 UWMP, the City adopted the first groundwater management plan within the Basin in August 2015 (Todd Groundwater, 2015). The City's Groundwater Management Plan (GWMP) was prepared in accordance with Assembly Bill 3030, Senate Bill 1938, and Assembly Billy 359. The objectives of the City's GWMP were to: (1) provide the City with a long-term, reliable and affordable high quality supply; (2) Maintain or improve groundwater quality and quantity for the benefit of all groundwater users; and (3) provide integrated water resource management for resilience during droughts, with service interruptions and emergencies, and with long-term climate change effects.

Additionally, the City has participated in regional groundwater management efforts by adopting *Resolution No. 4542* to commit to the regional groundwater management in the San Francisquito Creek Area. This resolution was passed by six other local agencies – Santa Clara Valley Water District (SCVWD), San Mateo County and the cities of Palo Alto, Menlo Park, Atherton, and Portola Valley – and represents a regional commitment to groundwater management.

Between 2016 and 2018, the City participated in a comprehensive groundwater assessment to study the Basin, which was lead by the San Mateo County (EKI, Todd Groundwater, HydroFocus, 2018). The primary objectives of the Basin assessment were to:

1. Increase public knowledge;
2. Evaluate hydrogeologic and groundwater conditions;
3. Identify potential impacts of sea level rise and climate change;
4. Evaluate potential impacts to groundwater quality and quantity, and
5. Develop potential groundwater management strategies.

6.1.2.3 Historical Groundwater Use

As discussed above, the City has historically used groundwater as a non-potable water source. Per the 2015 UWMP, the volume of groundwater extraction between 2011 through 2015 for non-potable uses ranged from 0 to 6 AFY.

6.1.2.4 Projected Future Groundwater Use

The City has been developing additional groundwater supplies to meet future water demands in the City's service area, provide sufficient fire flow, and provide the City with a supplemental potable water supply in the event of water supply emergencies. As discussed in the 2015 UWMP, the City has been pursuing a multi-pronged approach to develop its local groundwater supplies: (1) install and iron and manganese treatment system to allow use of its existing Gloria Way well, and (2) construct a new water supply well and treatment system (the Pad D well).

Construction of the Gloria Way Well Treatment System was completed in 2017 and the well system is currently undergoing a start-up phase. The City anticipates that the well system will be online for full operation in the near future, with a production capacity of 300 gallons per minute (“gpm”) for an average of eight hours per day, or approximately 161 AFY (City of East Palo Alto, 2016). Additionally, a test well has been constructed at the Pad D well site, and a production well and treatment system are anticipated to be completed in the future. Per the 2015 UWMP, aquifer testing results at the Pad D site test well indicate that the Pad D well will likely produce between 350 and 500 gpm, or between 500 and 750 AFY.

As discussed above, the City has recently obtained two water transfers that significantly increased the City’s available water supply. Specifically, in obtaining the water transfer from the City of Palo Alto, both parties recognized that the transfer will allow the City to use the Gloria Way and Pad D wells on a limited basis to preserve their operational capacity for emergency purposes, therefore protecting their shared aquifer. For the purposes of this study, we have assumed that Gloria Way Well’s production capacity of 161 AFY will be available by 2020 and a combined production capacity of the City’s wells is anticipated to be between 661 AFY by 2025. However, we recognize that the City plans to use groundwater supply on a limited basis and prioritize using imported water supplies to support its development needs.

6.2 Total Potable Supply in Normal, Single Dry, and Multiple Dry Years

Water Code Section 10910

(c) (3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

The City’s projected potable water supply sources, as described above, includes surface water purchased from SFPUC and groundwater from the City’s production wells. Various factors have changed since completion of the 2015 UWMP, that has significantly increase the City’ available water supply, including recent water rights transfers and the completion of the Gloria Way Well rehabilitation and treatment system. For the purposes of this study, we have prepared a preliminary update to the available water supply from SFPUC to the City in various dry year scenarios, provided in Table 8.

As discussed above (Section 6.1.1.4), there are two Water Supply Agreement components that govern allocation of water from the RWS to retail and wholesale customers during system-wide shortages, the Tier One and Tier Two Plans. The Tier One Plan was recently amended, while the Tier Two Plan is anticipated to be revised in the near future. Thus, the estimated volumes of water supply available to the City during dry years were estimated herein based on the revised

Tier One Plan and the City's current ISG, while assuming that available supply to all wholesale customers will be reduced uniformly during drought conditions.¹¹

As shown in Table 9, the current and planned future water supply within the City of East Palo Alto service area for normal hydrologic years is assumed to be 4,040 AFY by 2020 and increase to 4,540 AFY by 2025. Water supply from 2020 to 2040 is anticipated to be sufficient to meet projected annual water demand of the City.

During single dry years, estimated annual supply within the City will decrease to 3,378 AFY by 2020 and to 3,878 AFY between 2025 and 2040. No supply shortfalls are anticipated during single dry years from 2020 to 2040 (Table 10).

During multiple dry years, the estimated annual supply within the City will decrease to 3,454 AFY in the second and the third years of a drought between 2025 and 2040. No supply shortfalls are anticipated during multiple dry years from 2020 to 2040 (Table 11).

¹¹ As shown on Table 8, the revised Tier One Plan has not affected total water allocated to wholesale customers with respect to the volumes shown in the 2015 UWMP per the Tier One allocation process pre-amendment. This is because in the 2015 UWMP and for purposes of this study, the formula was applied assuming a full RWS demand of 265 MGD through 2040. The Tier One Plan revisions are intended to improve the water allocation process when RWS-wide demands are significantly lower, as was observed during the 2014-2017 drought.

7 COMPARISON OF SUPPLY AND DEMAND

Water Code Section 10910

(c) (3) If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water supply assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

The projected water supplies for the City of East Palo Alto service area are compared to the projected water demands, as shown in Tables 9, 10, 11. It should be noted that the demands of proposed Project were accounted for in the City of East Palo Alto 2015 UWMP projections, as discussed in Section 5.4. The City's recent water transfers and completion of the Gloria Way well rehabilitation and treatment system has significantly increased the City's available water supply. This supply will continue to increase when the City's Pad D well production well is completed in the future. Therefore, it is projected that available water supplies will meet the City's demands, inclusive of the Project, under normal year hydrologic conditions and all dry year scenarios through 2040.

8 CONCLUSIONS

The primary purpose of this WSE Study is to evaluate whether sufficient water supply is available to meet all future water demands within the water supplier's service area, including those associated with the proposed Project, during normal and dry hydrologic years for a 20-year time horizon.

As described in Section 4, the water demand of the proposed Project (i.e., 26 AFY at buildout) are consistent with the state's new water use efficiency requirements and the City's 2015 UWMP demand projection assumptions. Additionally, as discussed in Section 5.4, these demands are well within the projected water demand growth envisioned in the 2015 UWMP. It is projected that the City's available water supplies will meet all future water demands under normal year hydrologic conditions and all dry year scenarios through 2040. **Therefore, this WSE Study concludes that sufficient water supply is available to the City to meet all future demands within the City and those associated with the proposed Project.**

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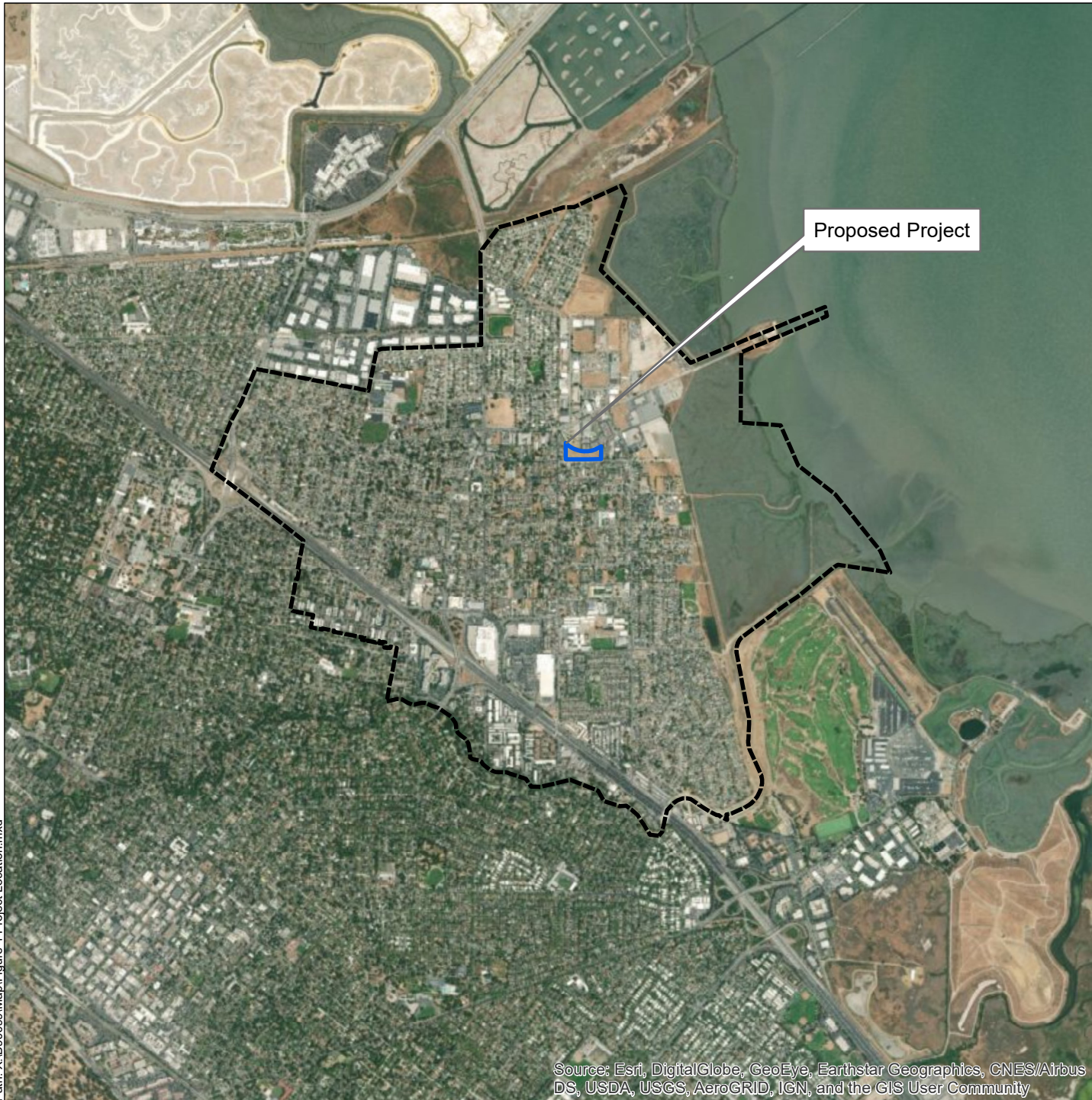
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Path: X:\B900699\Map\Figure 1 Project Location.mxd



Legend

-  Proposed Project Site
-  City Boundary

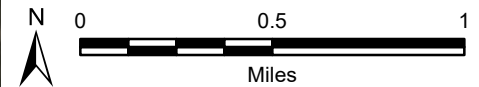
Proposed Project

Notes

1. All locations are approximate.
2. The subject property is identified by APN 063-232-210, 063-232-220, and 063-232-230.

Sources

1. Parcels APN boundaries obtained from San Mateo County in November 2010.
2. Basemap obtained from ESRI.



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Project Location

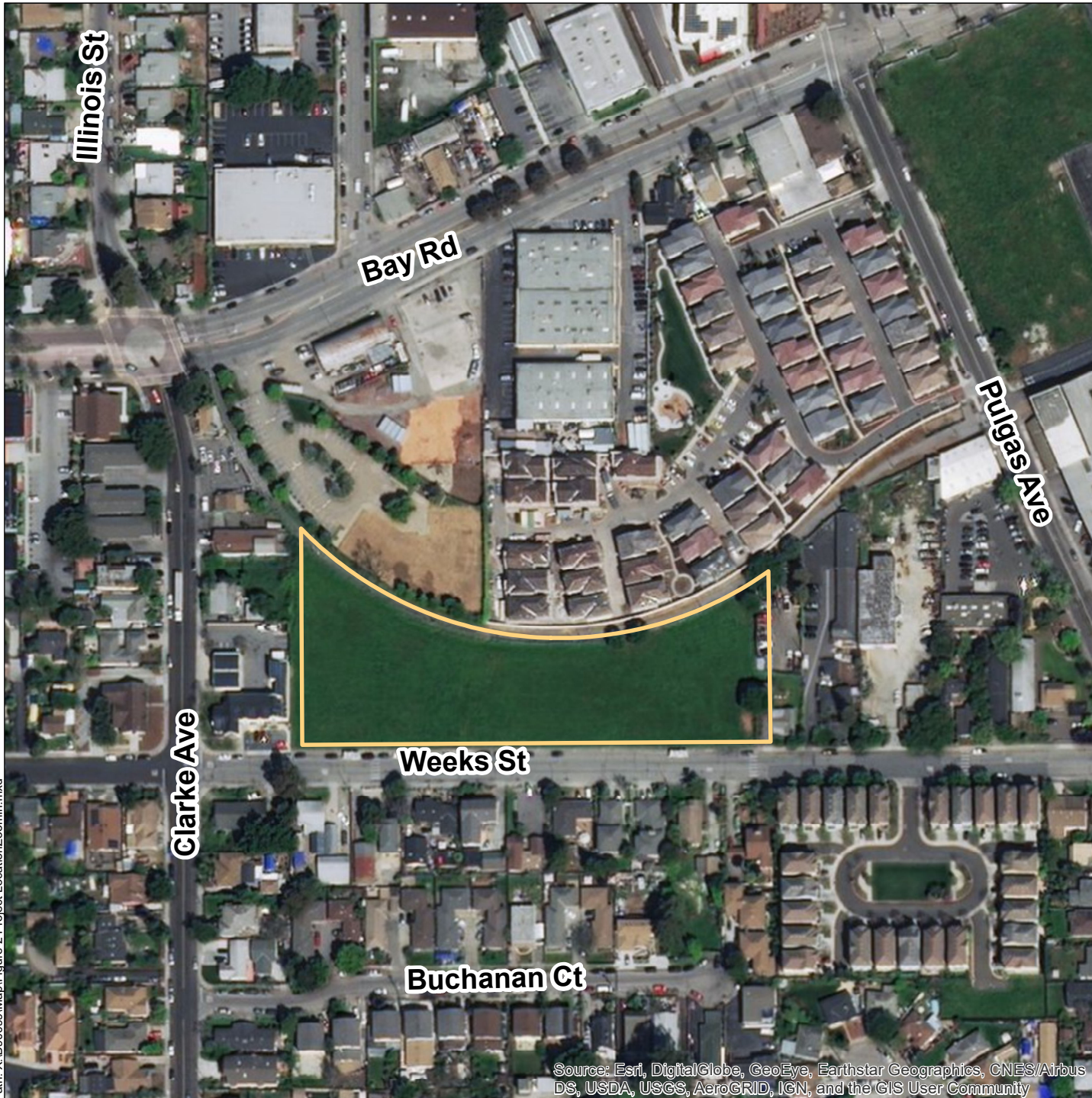
eki environment & water

965 Weeks Development
East Palo Alto, CA
September 2019
B90099.00


Figure 1

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Path: X:\B900699\Map\Figure 2 Project Location\ZoomIn.mxd



Legend

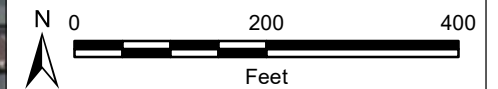
 Proposed Project Site

Notes

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- 2. The subject property is identified by APN 063-232-210, 063-232-220, and 063-232-230.

Sources

- 1. Parcels APN boundaries obtained from San Mateo County in November 2010.
- 2. Basemap obtained from ESRI.



DRAFT

Project Setting

eki environment & water

965 Weeks Development
East Palo Alto, CA
September 2019
B90099.00

Figure 2

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Table 1
Summary of Estimated Annual Project Water Demand
 965 Weeks Development

Water Use Category	Estimated Demand (gpd)	Estimated Demand (AFY)
Annual Project Indoor Demand (a)	19,877	22.3
Annual Project Outdoor Demand (b)	1,332	1.5
Distribution system losses (8.9%) (c)	1,888	2.1
Total Annual Project Demand w/ Distribution Loss	23,096	25.9

Abbreviations

AFY = Acre-feet per year

gpd = gallons per day

Notes

- (a) Details on indoor water demand see Table 2.
- (b) Details on outdoor water demand see Table 3.
- (c) Distribution system loss is assumed to be 8.9% of the total water delivery, which is consistent with the projected distribution system loss per Reference 1.
- (d) As discussed in Section 3, the existing water use at the site has been zero since 2006.

References

1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.

Table 2
Estimated Project Indoor Water Demand
 965 Weeks Development

End Use	Flow Rate (a)		Average Use Duration (b)		Daily Uses (b)		Occupants (c)		Indoor Water Demand (gpd)
Showerheads	1.8 gpm	×	7.8 min.	×	0.69	×	442	=	4,282
Toilets	1.28 gallons per flush	×	1 flush	×	5.0	×	442	=	2,829
Clothes Washers	31.5 gallons per cycle	×	1 ea.	×	0.3 (a)	×	442	=	4,180
Dishwashers	4.25 gallons per cycle	×	1 ea.	×	0.1 (a)	×	442	=	188
Average Daily Use per Capita per Day (gpcd) (d)									
Faucets	11.1					×	442		4,906
Leakage	7.9					×	442	=	3,492
Total Project Indoor Demand								=	19,877

Abbreviations

gpd = gallons per day

gpcd = gallons per capita per day

gpm = gallons per minute

Notes

- (a) Water conservation fixture flow rates are consistent with the City's building code and CALGreen, and are obtained from References 1 and 2. Clothes washer use per cycle is based on the average volume of a top loading clothes washer (4.85 cubic feet) multiplied by the maximum integrated water factor (6.5 gallons per cubic foot of wash load) per Reference 2. The flow rate of showerheads per Reference 3 is reduced to 1.8 gpm instead of 2 gpm which was required in Reference 1.
- (b) Average occupant fixture use frequency and duration obtained from Reference 4.
- (c) The estimated of number of occupants received is based on information provided by EMC Planning Group via email on 16 August 2019.
- (d) Average daily per capita flow was obtained from Reference 1, and is used to estimate water demand associated with faucets and in-home leakage. Per Reference 1, water use associated with faucets is likely to be driven by the required volume of the end use rather than frequency and duration, while fixture flow rates have minimal impacts on water use. The faucet end use category captures miscellaneous water use from multiple fixtures beyond kitchen and bathroom faucets and includes hose bibs, utility sinks, and other low volume water use events.

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4. DeOreo, William B., et al. Residential end uses of water, version 2. Water Research Foundation, 2016.

Table 3
Estimated Project Outdoor Water Demand
 965 Weeks Development

End Use	Unit Conversion (b)	ETo (in) (c)		Plant Factor (d)		Irrigation Efficiency (e)		Area (sq ft) (f)	=	Outdoor Water Demand (gpd)	
Landscape Area (a)	1.71E-03	43	x	0.4	/	75%	x	34,000	=	1,332	
Total Project Outdoor Demand										=	1,332

Abbreviations

gpd = gallons per day
 in = inches

MWELo = Model Water Efficient Landscape Ordinance
 sq ft = square feet

Notes

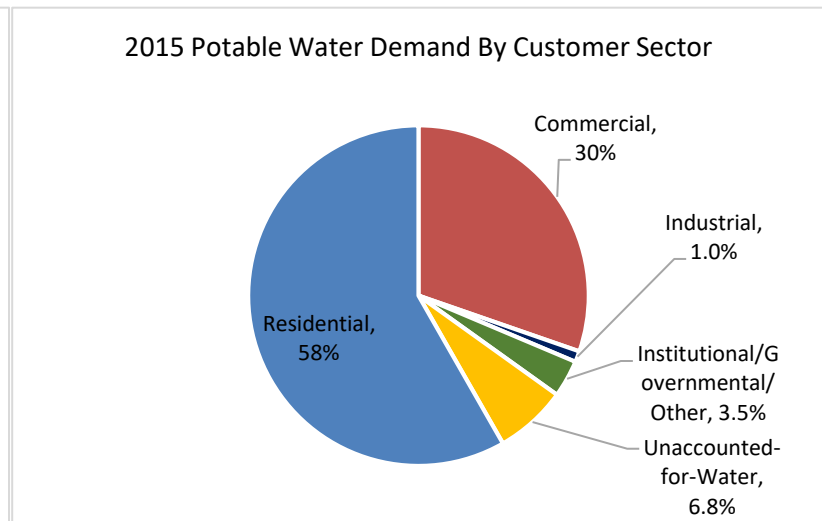
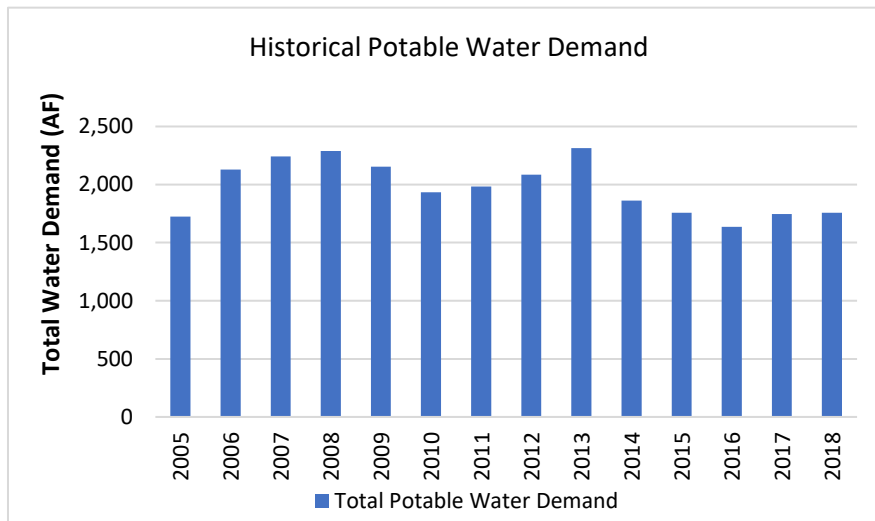
- (a) Outdoor water demand calculated pursuant to the MWELo Estimated Total Water Use (ETWU) method in Reference 1.
- (b) Unit conversion converts the calculated water demand in inches-sq ft-year to gallons per day.
- (c) Reference evapotranspiration (ETo) is obtained from Reference 2 for Palo Alto, which is the closest available location to the City.
- (d) Plant factor are assumed to be for low- to moderate- water use plants per Reference 3.
- (e) Irrigation efficiency is assumed to be 75% for spray head irrigation per Reference 3.
- (f) Estimated landscape area is based on information provided by EMC Planning Group via email on 28 August 2019.

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[https://govt.westlaw.com/calregs/Document/I0F1A18FBBA574ED797FB19729AC0756A?viewType=FullText&originationContext=document&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I0F1A18FBBA574ED797FB19729AC0756A?viewType=FullText&originationContext=document&transitionType=CategoryPageItem&contextData=(sc.Default))
3. Model Water Efficient Landscape Ordinance. Appendix B - Sample Water Efficient Landscape Worksheet. Barclays Official California Code of Regulations. Title 23, Waters Division, Department of Water Resources Chapter 2.7.
[https://govt.westlaw.com/calregs/Document/I94549DC989084D5FAFAB4BD72BAD3000?viewType=FullText&originationContext=document&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Document/I94549DC989084D5FAFAB4BD72BAD3000?viewType=FullText&originationContext=document&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1)

Table 4
Historical Potable Water Demand for the City of East Palo Alto
 965 Weeks Development

Category	City of East Palo Alto Annual Water Demand													
	(AFY)													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Imported Water from SFPUC (a)	1,725	2,130	2,243	2,288	2,155	1,935	1,982	2,084	2,315	1,861	1,758	1,636	1,745	1,757
Total Potable Water Demand	1,725	2,130	2,243	2,288	2,155	1,935	1,982	2,084	2,315	1,861	1,758	1,636	1,745	1,757



Abbreviations

AFY = acre ft per year

SFPUC = San Francisco Public Utilities Commission

Notes

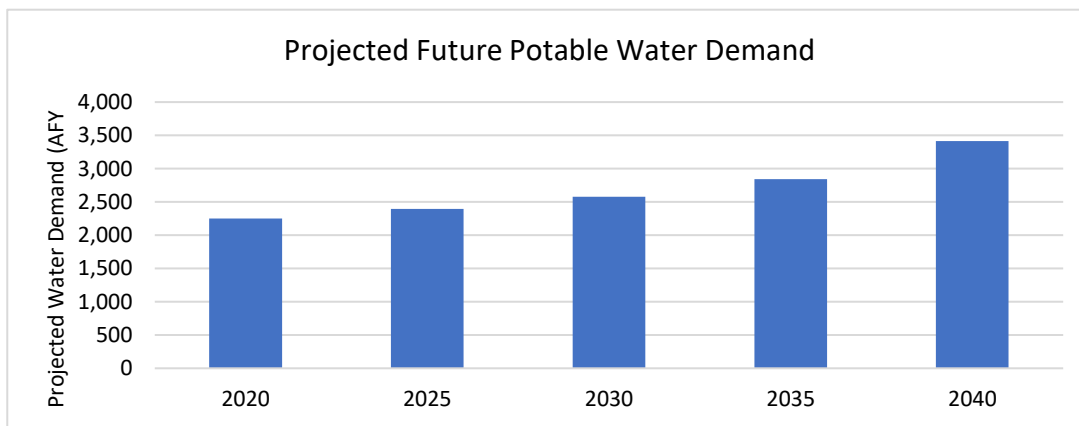
(a) Total potable water demand between 2005 and 2015 was obtained from Table 3-2 of Reference 1. Per Reference 1, in 2014, total water production is less than the total water demand due to metering inaccuracies. Total potable water demand between 2016 and 2018 were provided by City Staff from the City of East Palo Alto via email on 26 August 2019.

References

1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.

Table 5
Projected Future Potable Water Demand of the City of East Palo Alto
 965 Weeks Development

Customer Category	Projected Annual Water Demand (AFY) (a)				
	2020	2025	2030	2035	2040
Projected Residential Water Use	1,743	1,829	1,921	2,020	2,127
Projected Non-Residential Water Use	307	355	427	571	985
Unaccounted-for Water	199	212	228	252	303
Total Potable Water Demand (b)	2,249	2,396	2,576	2,844	3,415



Abbreviations

AFY = acre ft per year

Notes

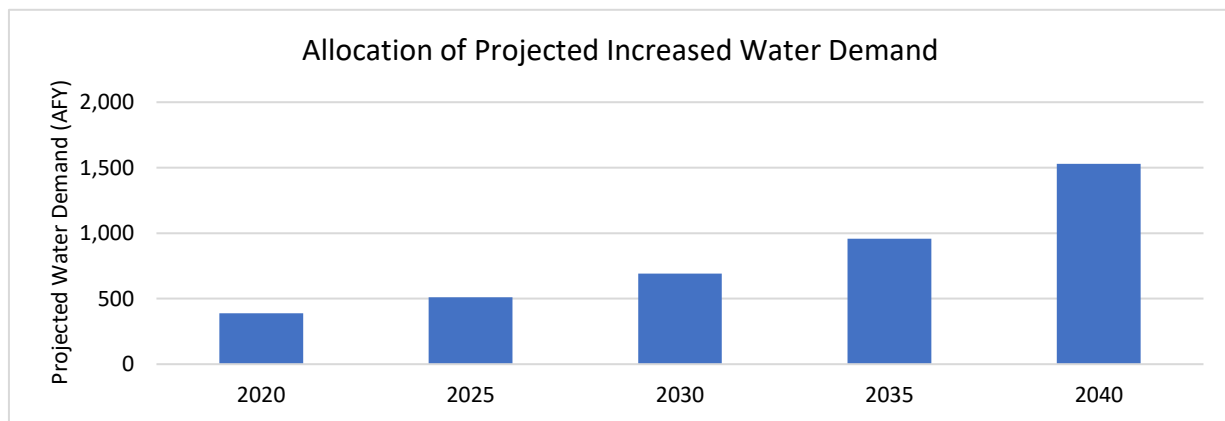
(a) Projected water demands presented obtained from Table 3-3 in Reference 1.

References

1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.

Table 6
Total Projected Future Water Demand of the City of East Palo Alto Inclusive of the Project Demand
 965 Weeks Development

Customer Category	Projected Annual Water Demand (AFY)				
	2020	2025	2030	2035	2040
Water Demand per 2015 UWMP					
Total Projected Potable Water Demand (a)	2,251	2,397	2,578	2,846	3,417
<i>Demand of Existing Service Connections (b)</i>	1,861	1,861	1,861	1,861	1,861
Projected Increased Water Demand	390	536	717	985	1,556
Allocation of Projected Increased Water Demand					
Previously Approved Development Projects (c)	0	0	0	0	0
965 Weeks Site Project (d)	0	26	26	26	26
Water Demand Available for Other Growth	390	511	691	959	1,530



Abbreviations

AFY = acre ft per year

WSA = Water Supply Assessment

Notes

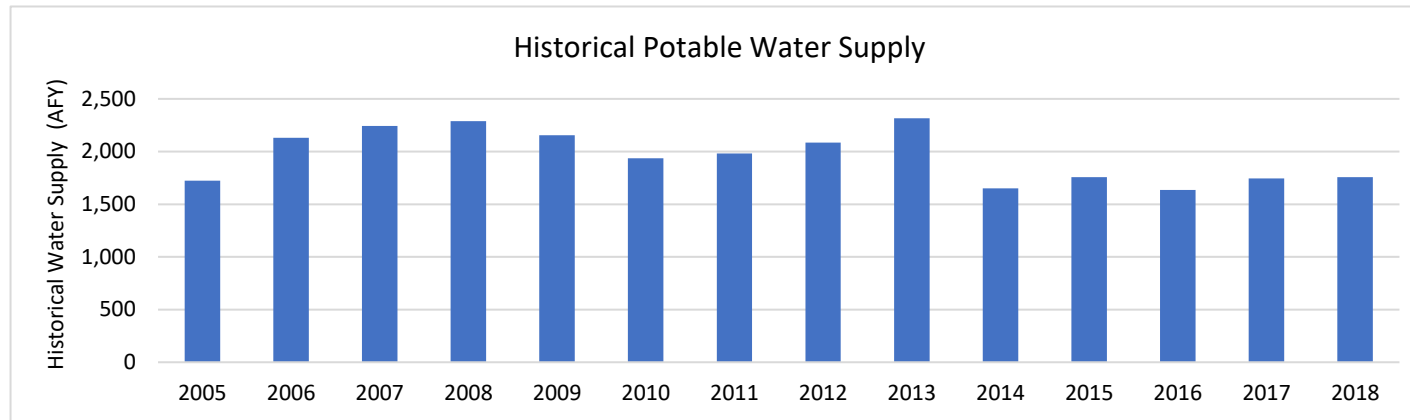
- (a) Projected potable water demands presented are obtained from Table 3-3 in Reference 1.
- (b) Demand of existing service connections is based on the highest annual water use in the past five years (i.e. between 2014-2018) and is obtained from Table 3-2 in Reference 1.
- (c) City staff confirmed via email on 4 September 2019 that no project has been required to submit a WSA since the completion of the 2015 UWMP.
- (d) Project water demand is detailed in Table 1.

References

- 1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.

Table 7
Historical Potable Water Supply for the City of East Palo Alto
 965 Weeks Development

Water Supply Source	Historical Water Supply (AFY)													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Imported Water from SFPUC (a)	1,725	2,130	2,243	2,288	2,155	1,935	1,982	2,084	2,315	1,651	1,758	1,636	1,745	1,757
Total Potable Water Supply	1,725	2,130	2,243	2,288	2,155	1,935	1,982	2,084	2,315	1,651	1,758	1,636	1,745	1,757



Abbreviations

AFY = acre ft per year

SFPUC = San Francisco Public Utilities Commission

Notes

(a) Historical water supplies between 2005 and 2015 were obtained from Tables 3-1, 3-2 and 5-1 in Reference 1. Total water supply between 2016 and 2018 were provided by City Staff via email on 26 August 2019.

References

1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.

Table 8
Imported Water Supply for the City of East Palo Alto in Dry Year Scenarios
 965 Weeks Development

Year Type	Available Imported Water from SFPUC				
	RWS System-wide Shortage (a)	Wholesale Allocation (MGD) (b)	Reliability (%) (c)	Assumed Volume Available to the City of East Palo Alto (MGD)	Assumed Volume Available to the City of East Palo Alto (AFY)
Normal Year	0%	184	100%	3.463 (d)	3,879
Single Dry Year	10%	152.6	83%	2.872 (d)	3,217
<i>Multiple Dry Years</i>					
Dry Year 1	10%	152.6	83%	2.872 (d)	3,217
Dry Year 2	22%	132.5	72%	2.494 (d)	2,793
Dry Year 3	22%	132.5	72%	2.494 (d)	2,793

Abbreviations

AFY = acre ft per year

MGD = million gallons per day

SFPUC = San Francisco Public Utilities Commission

ISG = Individual Supply Guarantee

RWS = Regional Water System

Notes

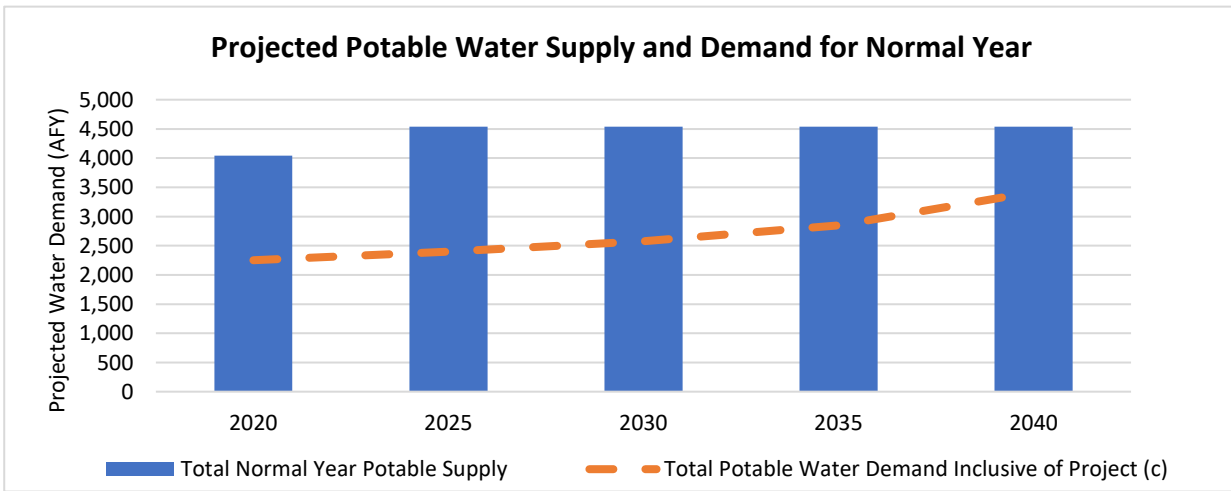
- (a) System-wide shortage in various year types were obtained from Appendix F in Reference 1.
- (b) Supply allocated to SFPUC wholesale customers are calculated per Tier One Plan in Reference 2.
- (c) Reliability is calculated by dividing water supplies available to the SFPUC wholesale customers in various year types by the supply assurance of wholesale customers at 184 MGD.
- (d) Assumed water supplies to the City of East Palo Alto in various year types are calculated by normalizing its ISG by the respective reliability.

References

- 1. 2015 Urban Water Management Plan for the City of East Palo Alto, prepared by EKI Environment & Water, dated June 2016.
- 2. Amended and Restated Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo and Santa Clara County, prepared by SFPUC, dated November 2018.

Table 9
Normal Year Water Supply and Demand for the City of East Palo Alto
 965 Weeks Development

Customer Category	Normal Year Water Supply and Demand (AFY)				
	2020	2025	2030	2035	2040
Potable Water Supply Sources					
Imported Water from SFPUC (a)	3,879	3,879	3,879	3,879	3,879
Groundwater Production (b)	161	661	661	661	661
Total Normal Year Potable Supply	4,040	4,540	4,540	4,540	4,540
Total Potable Water Demand Inclusive of Project (c)	2,251	2,397	2,578	2,846	3,417
Supply Shortfall (% demand)	--	--	--	--	--



Abbreviations

AFY = acre ft per year

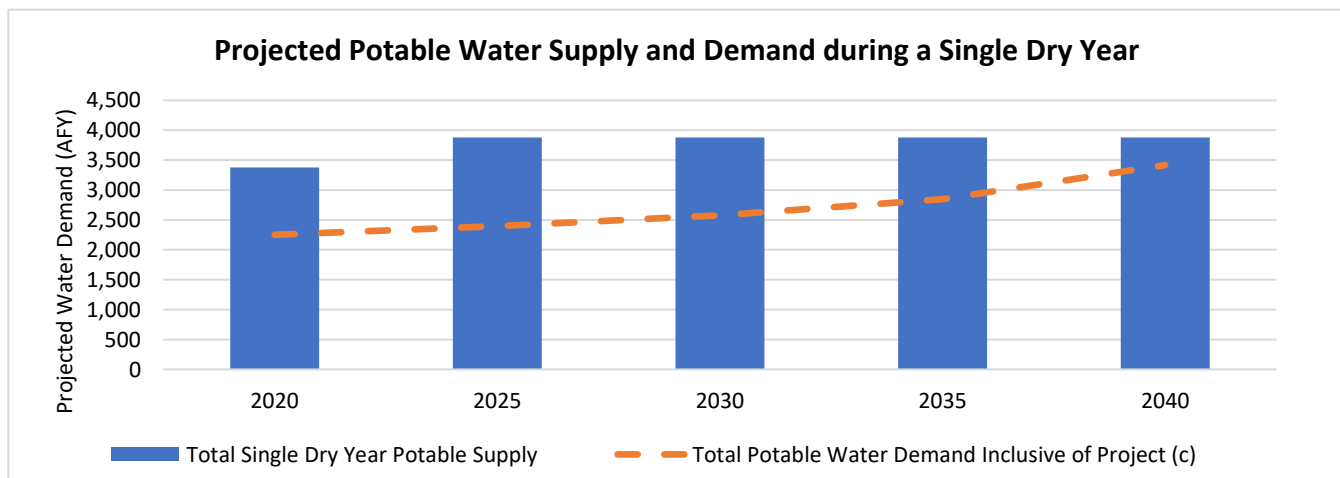
SFPUC = San Francisco Public Utilities Commission

Notes

- (a) Details on projected water supply from SFPUC are provided in Table 8.
- (b) It is conservatively assumed that available groundwater supplies will be equal to the lowest projected volume as discussed in Section 6.1.2.4.
- (c) Details on projected water demand are provided in Table 6.

Table 10
Comparison of Single Dry Year Water Supply and Demand for the City of East Palo Alto
 965 Weeks Development

Customer Category	Single Dry Year Water Supply and Demand (AFY)				
	2020	2025	2030	2035	2040
Potable Water Supply Sources					
Imported Water from SFPUC (a)	3,217	3,217	3,217	3,217	3,217
Groundwater Production (b)	161	661	661	661	661
Total Single Dry Year Potable Supply	3,378	3,878	3,878	3,878	3,878
Total Potable Water Demand Inclusive of Project (c)	2,251	2,397	2,578	2,846	3,417
Supply Shortfall (% demand)	--	--	--	--	--



Abbreviations

AFY = acre ft per year

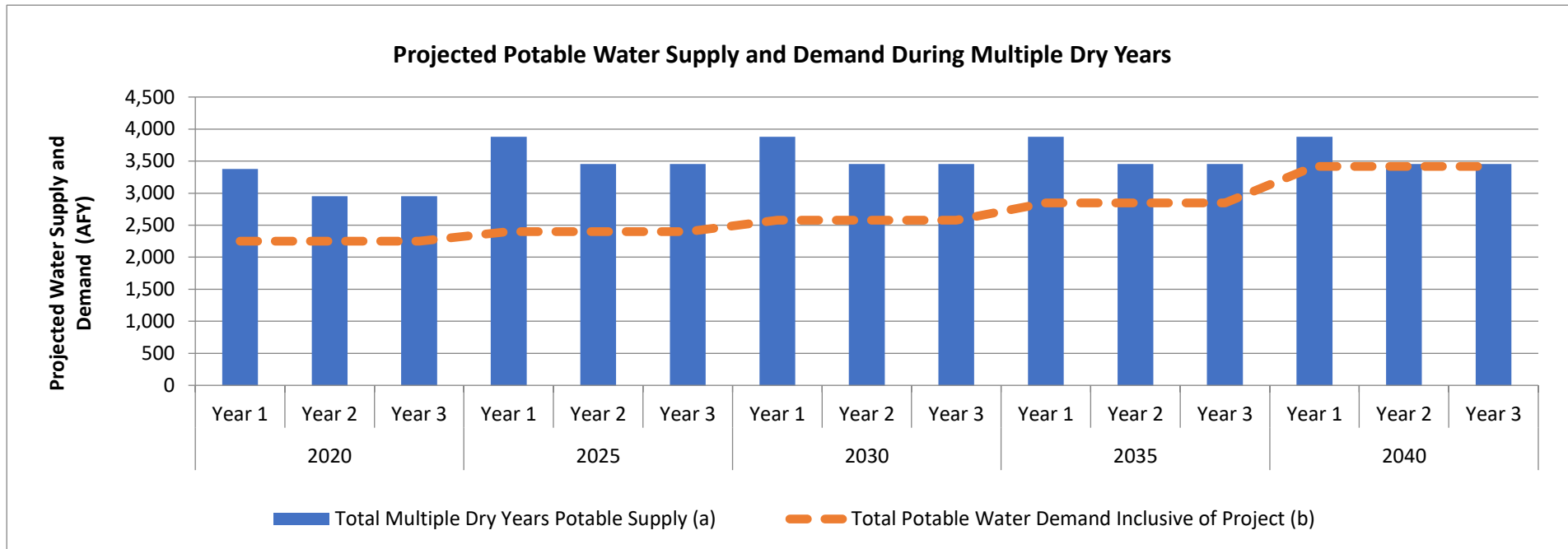
SFPUC = San Francisco Public Utilities Commission

Notes

- (a) Details on projected water supply from SFPUC are provided in Table 8.
- (b) It is conservatively assumed that available groundwater supplies will be equal to the lowest projected volume as discussed in Section 6.1.2.4.
- (b) Details on projected water demand are provided in Table 6.

Table 11
Comparison of Multiple Dry Year Water Supply and Demand for the City of East Palo Alto
 965 Weeks Development

Customer Category	Projected Water Supply and Demand During Multiple Dry Years (AFY)														
	2020			2025			2030			2035			2040		
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
Potable Water Supply Sources															
Imported Water from SFPUC (a)	3,217	2,793	2,793	3,217	2,793	2,793	3,217	2,793	2,793	3,217	2,793	2,793	3,217	2,793	2,793
Groundwater Production (b)	161	161	161	661	661	661	661	661	661	661	661	661	661	661	661
Total Multiple Dry Years Potable Supply (a)	3,378	2,954	2,954	3,878	3,454	3,454	3,878	3,454	3,454	3,878	3,454	3,454	3,878	3,454	3,454
Total Potable Water Demand Inclusive of Project (b)	2,251	2,251	2,251	2,397	2,397	2,397	2,578	2,578	2,578	2,846	2,846	2,846	3,417	3,417	3,417
Supply Shortfall (% demand)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--



Abbreviations

AFY = acre ft per year

SFPUC = San Francisco Public Utilities Commission

Notes

- (a) Details on projected water supply from SFPUC are provided in Table 8.
- (b) It is conservatively assumed that available groundwater supplies will be equal to the lowest projected volume as discussed in Section 6.1.2.4.
- (c) Details on projected water demand are provided in Table 6.

APPENDIX A
Documentation of Water Supply
Agreements (excluding attachments)

**AMENDED AND RESTATED
WATER SUPPLY AGREEMENT**

between

THE CITY AND COUNTY OF SAN FRANCISCO

and

WHOLESALE CUSTOMERS

in

**ALAMEDA COUNTY, SAN MATEO COUNTY AND
SANTA CLARA COUNTY**

NOVEMBER 2018

TABLE OF CONTENTS

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 Areas10

 3.04. Permanent Transfers of Individual Supply Guarantees12

 3.05. Restrictions on Resale13

 3.06. Conservation; Use of Local Sources; Water Management Charge13

 3.07. Restrictions on Purchases of Water from Others; Minimum Annual Purchases14

 3.08. Water Quality15

 3.09. Completion of WSIP15

 3.10. Regional Water System Repair, Maintenance and Operation16

 3.11. Shortages16

 3.12. Wheeling of Water from Outside SFPUC System19

 3.13. Limits on New Customers19

 3.14. Measurement of Water21

 3.15. New Sources of Water Supply to Maintain Supply Assurance23

 3.16. New Sources of Water Supply to Increase Supply Assurance24

 3.17. Westside Basin Groundwater Storage and Recovery Project24

 3.18. Water Supply Agreement Amendment Required.29

Article 4. Implementation of Interim Supply Limitation.....31

 4.01. Interim Supply Limitation Imposed by SFPUC31

 4.02. Retail and Wholesale Customer Allocations Under Interim Supply Limitation31

 4.03. Transfers of Interim Supply Allocations.....31

 4.04. Environmental Enhancement Surcharge.....32

 4.05. San Jose/ Santa Clara Interim Supply Allocation and Process for Reduction/
Termination.....34

 4.06. San Francisco Decisions in 2028 Regarding Future Water Supply36

4.07.	Retained Discretion of SFPUC and Wholesale Customers	36
Article 5.	Wholesale Revenue Requirement	38
5.01.	Scope of Agreement	38
5.02.	General Principles	38
5.03.	Capital Cost Recovery - Existing Regional Assets	40
5.04.	Capital Cost Contribution - New Regional Assets	42
5.05.	Water Enterprise Operation and Maintenance Expenses.....	44
5.06.	Water Enterprise Administrative and General Expenses.....	46
5.07.	Water Enterprise Property Taxes.....	48
5.08.	Hetch Hetchy Enterprise Expenses	48
5.09.	Hetch Hetchy Enterprise Capital Costs	50
5.10.	Additional Agreements Related to Financial Issues	51
5.11.	Classification of Existing System Assets.....	54
Article 6.	Integration of Wholesale Revenue Requirement with SFPUC Budget Development and Rate Adjustments	57
6.01.	General.....	57
6.02.	Budget Development	57
6.03.	Rate Adjustments	57
6.04.	Rate Structure	59
6.05.	Balancing Account.....	60
6.06.	Wholesale Revenue Coverage Reserve	62
6.07.	Working Capital Requirement	64
6.08.	Wholesale Capital Fund.....	65
6.09.	SFPUC Adoption of Regional Water System 10-Year Capital Improvement Program	67
Article 7.	Accounting Procedures; Compliance Audit	72
7.01.	SFPUC Accounting Principles, Practices	72
7.02.	Calculation of and Report on Wholesale Revenue Requirement.....	73
7.03.	Appointment of Compliance Auditor.....	74
7.04.	Conduct of Compliance Audit	75
7.05.	Issuance of Compliance Auditor's Report	77
7.06.	Wholesale Customer Review.....	78
Article 8.	Other Agreements of the Parties.....	79
8.01.	Arbitration and Judicial Review	79
8.02.	Attorneys' Fees.....	83
8.03.	Annual Meeting and Report	84
8.04.	8.04 Administrative Matters Delegated to BAWSCA	85

8.05.	Preservation of Water Rights; Notice of Water Rights Proceedings	86
8.06.	SFPUC Rules and Regulations.....	86
8.07.	Reservations of, and Limitations on, Claims	87
8.08.	Prohibition of Assignment	89
8.09.	Notices	90
8.10.	Incorporation of Attachments	91
8.11.	Interpretation	91
8.12.	Actions and Approvals by San Francisco.....	91
8.13.	Counterparts.....	91
8.14.	Limitations on Damages	92
8.15.	Force Majeure	92
8.16.	No Third-Party Beneficiaries	93
8.17.	Good Faith and Fair Dealing.....	93
Article 9.	Implementation and Special Provisions Affecting Certain Wholesale Customers.....	94
9.01.	9.01 General; Individual Water Sales Contracts.....	94
9.02.	California Water Service Company	94
9.03.	City of Hayward	96
9.04.	Estero Municipal Improvement District.....	97
9.05.	Stanford University	97
9.06.	City of San Jose and City of Santa Clara	98
9.07.	City of Brisbane, Guadalupe Valley Municipal Improvement District, Town of Hillsborough.....	99

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 Revenue-Funded Capital Expenditures (Section 5.03)
- K-3 Annual Payments for Wholesale Share of 6/30/09 Net Plant & CWIP (Water Assets) (Section 5.03)
- K-4 Annual Payments for Wholesale Share of 6/30/09 Net Plant & CWIP (Hetch Hetchy Assets) (Section 5.03)
- K-5 10-Year Payoff Schedules for Existing Rate Base (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 Capital Fund and Balancing Account Adjustment (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-1 San Jose Service Area (Section 9.06)
- Q-2 Santa Clara Service Area (Section 9.06)
- R Classification of Existing System Assets (Section 5.11)

AMENDED AND RESTATED
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
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:

<u>Attachment</u>	<u>Name</u>
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

R Classification of Existing System Assets (subject to Section 5.11)

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 26 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. Wholesale Customer Service Areas

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 30, 2021. 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 Level of Service Goals and Objectives. 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 and Objectives 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, 2028.** Until December 31, 2028, 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, 2028.** As of January 1, 2029, 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 Groundwater Storage and Recovery Project

In August 2014, the SFPUC approved a WSIP project called the Groundwater Storage and Recovery Project ("Project"), which authorized the SFPUC to enter into an agreement governing the operation of the Project with the Participating Pumpers entitled "Agreement for Groundwater Storage and Recovery from the Southern Portion of the Westside Groundwater Basin by and among the San Francisco Public Utilities Commission, the City of Daly City, the City of San Bruno, and California Water Service Company" ("Project Operating Agreement"), which became effective on December 16, 2014. The Project produces 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 accrues to storage as a result of

delivery of In Lieu Water will be recovered from the SFPUC Storage Account during water shortages using new Regional Project Facilities or Shared Facilities operated by the Participating Pumpers and the SFPUC. Project mitigation capital costs and annual Project operations and maintenance expenses and water supplies shall 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.

C. In the event that it is necessary to reduce the Participating Pumpers' aggregate designated quantity of groundwater production allocation pursuant to Section 4.7 of the Project Operating Agreement, the SFPUC may supply an annual maximum of up to 500 acre feet of Participating Pumper Replacement Water from the Regional Water System at a price comparable to the Participating Pumpers' then-current groundwater cost, as may be adjusted annually as provided for in Section 4.7 of the Project Operating Agreement. Each of the Participating Pumpers may elect to take delivery of its share of Participating Pumper Replacement Water either as interruptible surface water deliveries from the Regional Water System or as a transfer of storage credits from the SFPUC Storage Account. All revenue received from such water sales or transfers shall be considered revenue related to the sale of water and allocated between Retail Customers and Wholesale Customers on the basis of Proportional Water Use. All volumes of Participating Pumper Replacement Water delivered 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.

D. Any operation and maintenance expenses incurred by the Participating Pumpers and the SFPUC that are related to the operation of Project Facilities and Shared Facilities for Project purposes shall be included as Regional pumping expenses under Section 5.05.B of this Agreement and included as part of the Wholesale Revenue Requirement. For rate setting purposes, estimated Project operation and maintenance expenses shall be used as set forth in

Section 6.01 of this Agreement. Operation and maintenance expenses associated with the Participating Pumpers' Existing Facilities 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 operation and maintenance expenses associated operation of the Participating Pumpers' Existing Facilities in the Wholesale Revenue Requirement provided that such expenses (1) are solely attributable to Project operations for a Regional benefit 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. The SFPUC shall provide the Wholesale Customers with copies of Project Operation and Maintenance Expenses documentation provided by the Participating Pumpers under Section 9.2 of the Project Operating Agreement.

E. The Project Mitigation, Monitoring and Reporting Program ("MMRP") adopted by the SFPUC included mitigation measure HY-6 to prevent well interference impacts to the Irrigation Well Owners. In mitigation measure HY-6, the SFPUC agreed to provide standby supplies of Irrigation Well Owner Replacement Water from the Regional Water System, to alter Project operations, and implement other actions (e.g., well replacement) to avoid well interference impacts that require the consent of the Irrigation Well Owners. The SFPUC's Project mitigation and other obligations to the Irrigation Well Owners are memorialized in substantially identical "Groundwater Well Monitoring and Mitigation Agreements" with one or more of the Irrigation Well Owners. For purposes of this Agreement, water supplies, and the capital costs and operations and maintenance expenses associated with providing Irrigation Well Owner Replacement Water and implementing other mitigation actions identified in the Project MMRP, shall be allocated as follows:

1. Irrigation Well Owner Replacement Water shall be limited to a cumulative maximum of 1.76 mgd and shall be delivered only in volumes necessary for mitigating well interference impacts as provided in the Project MMRP. The supply of Irrigation Well Owner Replacement Water by the SFPUC shall not be considered a new water supply commitment to Retail Customers or Wholesale Customers under Section 3.13 of this Agreement. The annual volume of Irrigation Well Owner Replacement Water supplied shall be metered and allocated as water from the Regional Water System during shortages between Retail Customers and Wholesale Customers in proportion to and consistent with the provisions of the Shortage Allocation Plan. All revenue received from Irrigation Well Owners for metered deliveries of Irrigation Well Owner Replacement Water shall be considered revenue related to the sale of

water and allocated between Retail Customers and Wholesale Customers on the basis of Proportional Water Use.

2. All Project capital costs incurred by the SFPUC in complying with the mitigation measures in the Project MMRP shall be considered Regional capital costs under Section 5.04 of this Agreement.

3. Operations and maintenance expenses incurred by the SFPUC in maintaining Project mitigation assets described in the Project MMRP shall be considered Regional transmission and distribution expenses under Section 5.05.D of this Agreement. Well pumping expenses that are required to be paid by the SFPUC in the agreements with the Irrigation Well Owners shall be considered Regional pumping expenses under Section 5.05.B of this Agreement.

4. Any wheeling charges imposed by California Water Service Company for delivery of Irrigation Well Owner Replacement Water shall be considered Regional transmission and distribution expenses under Section 5.05.D of this Agreement.

F. F. The SFPUC will audit (1) operation and maintenance expenses submitted by the Participating Pumpers, and (2) well pumping expenses submitted by the Irrigation Well Owners, for reimbursement to confirm that such costs were incurred, respectively, as a result of (1) operating Project Facilities and Shared Facilities for a Regional benefit and (2) complying with mitigation obligations in the Project MMRP. Costs associated with the use of Project Facilities or Shared 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 and Irrigation Well Owners concerning expense allocations. Project 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 of this Agreement. The Wholesale Customers may dispute the SFPUC's resolution of expense allocations through the arbitration provisions in Section 8.01 of this Agreement.

G. The SFPUC may direct the Participating Pumpers to recover water from the SFPUC Storage Account for any type of shortage referenced in Section 3.11 of this Agreement. Water recovered from the SFPUC Storage Account using Project Facilities and Shared Facilities 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 Project Facilities and Shared Facilities for Regional benefits, including expenses incurred due to compliance with mitigation measures in the Project MMRP.

H. All water recovered during shortages caused by drought from the SFPUC Storage Account for Regional benefit, by the Participating Pumpers and by the SFPUC for delivery to Retail and Wholesale Customers, 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.

I. If the Project is terminated for any reason, including breach of the Project Operating Agreement by one or more of the Participating Pumpers or the SFPUC, a force majeure event as specifically defined by the Project Operating Agreement, or due to regulatory action or legal action, then:

1. Any water remaining in the SFPUC 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 3.17 of this Agreement; and

3. If Project Facilities are no longer capable of being used for a Regional benefit, the Wholesale Customers will be credited with their share of proceeds from disposition of Project Facilities or reimbursed their share of such capital costs for any Project 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 Project Facilities.

J. In the event that a Participating Pumper establishes the occurrence of a force majeure event as defined in the Project Operating Agreement, the SFPUC may enter into negotiations with the Participating Pumper to take over the operation of the portion of any Shared Facilities used for Project purposes for continued Regional use. If the SFPUC cannot reach agreement regarding the continued use of Shared Facilities for ongoing Regional benefit, the Participating Pumper shall reimburse the SFPUC and the Wholesale Customers for their respective shares of previously incurred Project capital costs used to upgrade the Shared

Facilities on the basis of (a) original cost less depreciation and outstanding related Indebtedness or (b) original cost less accumulated depreciation for revenue funded Shared Facilities. In the event that the SFPUC seeks to take over the operation of Shared Facilities for Direct Retail use, or one or more Wholesale Customers seeks to negotiate with a Participating Pumper to take over the operation of Shared Facilities for individual use or Direct Wholesale use, the party or parties benefiting from such transfer of Shared Facilities shall reimburse the other parties to this Agreement with their respective shares of previously incurred Project capital costs on the basis described in the previous sentence, or as the parties may otherwise agree.

3.18. Water Supply Agreement Amendment Required.

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

1. Abandoning or decommissioning O'Shaughnessy Dam; or
2. Draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the Level of Service Goals and Objectives;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets

that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

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 and Objectives 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, and how the SFPUC will conduct water supply planning after 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 2028. Water supplied by San Francisco may only be used in the defined service areas of San Jose and Santa Clara shown on Attachment Q-1 and Q-2, respectively. 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, and water supply planning after December 31, 2018, are subject to the following provisions:

A. In December 2010 and in each December thereafter through 2027, the SFPUC shall prepare and the Commission shall consider, at a regularly scheduled public meeting, a Water Supply Development Report detailing progress made toward (1) meeting the Interim Supply Limitation by June 30, 2018 and (2) developing additional water supplies that will allow the Commission to designate San Jose and Santa Clara as permanent Wholesale Customers of the Regional Water System with a combined Individual Supply Guarantee of up to 9 MGD by the end of the Term on June 30, 2034.

B. The annual Water Supply Development Report shall be based on water purchase projections and work plans 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 (1) the Interim Supply Limitation will not be met by June 30, 2018, as a result of Wholesale Customers' projected use exceeding 184 MGD, or (2) the purchases of the Wholesale Customers, including San Jose and Santa Clara, are projected to exceed 184 MGD before June 30, 2028, the Commission may issue a conditional ten 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 (1) sufficient progress has been made toward meeting the Interim Supply Limitation, or (2) projections show that the projected purchases of the Wholesale Customers, including San Jose and Santa Clara, will not exceed 184 MGD by June 30, 2028.

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 ten years from the notice, whichever is longer. If the ten year notice is issued after 2018, such interruption or reduction would be effective after 2028.

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. San Francisco Decisions in 2028 Regarding Future Water Supply

A. By December 31, 2028, 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 with a combined Individual Supply Guarantee of 9 MGD allocated equally between the two cities, as well as how much water in excess of 9 MGD it will supply to San Jose and Santa Clara. 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, 2028, 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 2040, and whether to offer a corresponding increase in the Supply Assurance as a result of these determinations.

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 30, 2021;
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;
9. Offer a corresponding volumetric increase in the Supply Assurance; and
10. Implement the Hetch Hetchy Water and Power projects listed in Attachment R-2.

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.

5.11. Classification of Existing System Assets.

Existing System Assets of the Regional Water System include the water storage, transmission, and treatment systems owned and operated by San Francisco in Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo and San Francisco Counties. These assets are managed by either the Water Enterprise or the Hetch Hetchy Enterprise and the assets have been classified for purposes of cost allocation.

A. **Water Enterprise Assets.** Water Enterprise assets are currently managed, operated, and maintained by the Water Enterprise and are generally located west of Alameda East Portal, in addition to the treatment facilities located at Tesla and the Thomas Shaft Emergency Disinfection Facility. These assets are classified as Direct Retail, Direct Wholesale, or Regional.

B. **Hetch Hetchy Enterprise Assets.** Hetch Hetchy Enterprise assets are currently managed, operated and maintained by the Hetch Hetchy Enterprise and are generally located east of the Alameda East Portal of the Coast Range Tunnel in Sunol Valley, Alameda County. These assets are classified as Power-Only, Water-Only, or Joint, in accordance with Sections 5.08 and 5.09. Through the Wholesale Revenue Requirement, the Wholesale Customers pay Existing System Asset capital costs and operating expenses in accordance with Section 5.02.F and do not pay capital costs or operating expenses associated with assets classified as Direct Retail, Power-Only, and the Power-Related portion of Joint assets.

C. **Attachment R Documents Classifications.** To facilitate WSA administration, Attachment R documents the classification of major Existing System Assets operated by the Hetch Hetchy Enterprise. Attachment R consists of three documents: R-1 Introduction, R-2 Special Classification of Discrete Projects for 2018 Amendment Purposes, and R-3 Major Hetch Hetchy Enterprise Existing System Assets. Attachment R may be modified as specified in Section 5.11.D and in the manner set forth in Section 2.03.C.

D. **Attachment R-3, Major Hetch Hetchy Enterprise Existing System Assets is Not Exhaustive.** Existing System Assets include, but are not limited to, land; fixed infrastructure such as dams, tunnels, buildings, water treatment plants and pipelines; equipment such as pumps and vehicles; and related appurtenances. Major Hetch Hetchy Enterprise Existing System Assets, and their classifications, are listed in Attachment R-3. Attachment R-3 does not include all assets of the Regional Water System, but represents the parties' best efforts to document major Hetch Hetchy Enterprise Existing System Assets that would incur capital costs and operating expenses subject to cost allocation. The classification of assets listed on R-3 may not be changed during the Term, any Extension Term, and any renewal of the Agreement, however, Attachment R-3 may be modified by mutual agreement in accordance with Section 2.03.C to (1) add an asset that was inadvertently omitted, (2) to add a new asset, and (3) remove a destroyed or obsolete asset. In the event that the parties cannot agree on the classification of any omitted or new assets, the dispute shall be subject to arbitration under Section 8.01.

E. **Attachment R-3, Major Hetch Hetchy Enterprise Existing System Assets Classifications are Fixed.** The classification of the major Hetch Hetchy Enterprise Existing System Assets is fixed and shall control the allocation of capital costs and operating expenses for the remainder of the Term, any Extension Terms, and any renewal of the Agreement. However, changes may be proposed in accordance with subsection G below. Capital costs and operating expenses are meant to be inclusive of all costs related to assets, including, but not limited to, any alterations, additions, improvements, rehabilitation, replacement of assets, and equipment that is appurtenant thereto. Since asset classifications are fixed in Attachment R-3, asset classifications may not be modified by mutual agreement in accordance with Section 2.03.C.

F. **Attachment R-2, Special Classification of Discrete Projects for 2018 Amendment Purposes.** Past, ongoing and future capital projects involving five Hetch Hetchy Enterprise Existing System Assets defined in Attachment R-2 have classifications that differ from the underlying asset classifications. These project-related classification changes shown on Attachment R-2, are part of the 2018 amendments to the Agreement and are not precedential for any other asset-related capital cost or operating expense. With the exception of the defined projects related to the five assets listed on R-2, the capital projects for all assets follow the asset classifications. Capital projects listed on Attachment R-2 must be approved by the SFPUC following necessary CEQA review.

G. **Five Year Notice of Intent to Renegotiate Cost Allocation.** In the event San Francisco or the Wholesale Customers, which may be represented by BAWSCA, wish to propose and negotiate a change in Existing System Asset classifications, or a change in the Water-Related portion (45 percent) of Joint expenses, for the next Water Supply Agreement, such party must provide the other at least 5 years' written notice prior to the expiration of the Term or Extension Term, or the renewal of the Agreement. At a minimum, the noticing party must provide a comprehensive analysis of the financial and rate impacts of the proposed change at least two years prior to the expiration of the Term or Extension Term, or the renewal of the Agreement.

To meet this requirement, the parties may agree to jointly analyze, under a separate agreement, system capacity and usage and/or new assets, as well as other possible alternative cost allocation methodologies. Either party may also unilaterally initiate such studies by consultants of their choice and bear all their own costs.

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. Wholesale Revenue Coverage Reserve

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. Working Capital Requirement

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. Wholesale Capital Fund

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 balance in the Wholesale Capital Fund, the status of the fund balance will be reviewed through the annual Compliance Audit, commencing in FY 2018-19. The FY 2018-19 Compliance Audit and the Wholesale Customer/BAWSCA review under Section 7.06 shall include Wholesale Capital Fund appropriations, expenditures and interest earnings for FY 2014-15 through 2017-18 for the purpose of determining whether a Balancing Account transfer is required. If the June 30 unencumbered balance of the Wholesale Capital Fund exceeds the lesser of the following: (i) the Target Balance; (ii) the unencumbered remaining cumulative appropriations, the amount of such excess shall be transferred to the credit of the Wholesale Customers to the Balancing Account described in Section 6.05.

In order to avoid funding delays for New Regional Asset capital projects resulting from prior year transfers of excess Wholesale Capital fund balances to the Wholesale Customers, if the June 30 unencumbered balance of the Wholesale Capital Fund is below the lesser of the following: (i) the Target Balance; (ii) the unencumbered remaining cumulative appropriation, such deficiency shall be posted to the Balancing Account described in Section 6.05 as a charge to the Wholesale Customers. Notwithstanding the foregoing, no such charge to the Wholesale Customers shall exceed \$4 million annually.

Amended Attachment M-3 illustrates the process for determining the Wholesale Capital Fund balance as of June 30, 2019.

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.

6.09. SFPUC Adoption of Regional Water System 10-Year Capital Improvement Program

A. **Established Level of Service Goals and Objectives.** In approving the WSIP, the Commission adopted Level of Service Goals and Objectives that are, in part, used to develop capital programs related to water, including the 10-Year Capital Improvement Program for the Regional Water System (“10-Year CIP”). BAWSCA and the Wholesale Customers shall have the opportunity to review and provide written or oral comments on any changes to the Level of Service Goals and Objectives that may be submitted to the Commission for approval.

B. **Submittal of an Asset Management Policy.** Prior to December 31, 2020, the SFPUC shall develop and submit to the Commission for approval an Asset Management Policy applicable to the Regional Water System.

C. **Coordination of 10-Year CIP and SFPUC Budget Meetings.** The Commission annually reviews, updates, and adopts a 10-Year CIP pursuant to Section 8B.123 of the San Francisco Charter. At two-year intervals, the Commission holds two budget meetings concerning the 10-Year CIP. Over the course of the two budget meetings, the SFPUC reviews its budget priorities, potential changes to projects in the previously adopted 10-Year CIP, and the potential financial implications of such changes. In the event that Charter amendments are placed on the ballot that could alter or amend the City’s budget preparation and adoption efforts, BAWSCA shall be notified in advance of any proposed change that could result in a less robust CIP development effort, and BAWSCA and the SFPUC shall meet to consider BAWSCA’s comments on maintaining a robust CIP development effort.

D. **Mid-cycle Changes to the 10-Year CIP.** The SFPUC shall include within the Water Enterprise Capital Improvement Program Quarterly Projects Reports that it provides to the Commission (“CIP Quarterly Projects Reports”) discussion of any material changes proposed to projects that are included in the most recently adopted 10-Year CIP. The SFPUC defines a material change as a change that applies to a CIP project whose approved CIP budget is equal to or greater than \$5,000,000 that results in one or more of the following:

1. Increases the cost of the CIP project by more than 10%.
2. Increases the schedule of the CIP project by extending said schedule by 12 calendar months or greater.

3. Affects the SFPUC's ability to meet the Level of Service Goals and Objectives.

The SFPUC shall also include within the CIP Quarterly Projects Reports discussion of any new capital project that is not included in the most recently adopted 10-Year CIP if the SFPUC has 1) begun spending on the project and 2) anticipates that it will require total funding in excess of \$5,000,000. For such projects, the parties recognize that the work may be of an urgent nature and that details of those projects may be developing quickly to address a critical need. The SFPUC commits that, for these projects, an expanded discussion will be provided in quarterly reports generated 6 months following the creation of the project in the City's finance and accounting system. At a minimum, the discussion will include: 1) a detailed scope of work, 2) schedule, 3) cost breakdown, and 4) proposed source of funding. This level of detail shall continue to be included in subsequent quarterly reports through either the completion of the work or until the work is included as part of an adopted 10-Year CIP.

E. **BAWSCA and Wholesale Customer Notice and Review.** Beginning in 2020, at least 30 days before the first budget meeting, the SFPUC shall provide BAWSCA and the Wholesale Customers with written notice of the dates of the two budget meetings. At least 30 days before the first budget meeting, the SFPUC shall also provide BAWSCA and the Wholesale Customers with a draft of the 10-Year CIP and meet with those same parties to review potential candidate projects that it is considering for inclusion in the 10-Year CIP. Final materials for the first budget meeting will be made available to BAWSCA and the Wholesale Customers no less than 14 days prior to that budget meeting. Final materials for the second budget meeting will be made available to BAWSCA and the Wholesale Customers on the same date that they are made available to the Commission. Prior to the Commission's adoption of the 10-Year CIP at the second budget meeting, San Francisco shall respond, in writing, to all written comments by BAWSCA and the Wholesale Customers on the 10-Year CIP that were submitted prior to the date of the first budget meeting.

F. **Contents of Draft 10-Year CIP – Projects in Years One and Two of 10-Year Schedule.** The SFPUC's CIP projects generally fall into three categories: defined projects, placeholder concepts that could become projects, and programmatic spending for expenses likely to be made but for which there is no schedule. Projects in the near-term years of the 10-Year CIP have more definition than those in the outer years, and as a result more detailed information is available for them. For each project listed that has significant expected

expenditures identified in the first two years of the 10-Year CIP, the draft 10-Year CIP made available to BAWSCA and the Wholesale Customers shall include the following elements:

1. Project name.
2. Project description and justification.
3. Description of the project's relationship to the Level of Service Goals and Objectives.
4. Project asset classification for cost-allocation purposes, pursuant to Attachment R for Hetch Hetchy Enterprise assets, or as Regional or Retail for Water Enterprise assets.
5. Project schedule where applicable, broken down by phase, through to completion.
6. Total project budget estimate including a proposed inflation rate.

G. **Contents of Draft 10-Year CIP – Projects Listed After First Two Years of 10-Year Schedule.** For each project that is listed in years three through ten of the 10-Year CIP, the draft 10-Year CIP made available to BAWSCA and the Wholesale Customers shall include the following elements:

1. Project name.
2. Project description and justification.
3. Description of the project's relationship to the Level of Service Goals and Objectives.
4. Project asset classification for cost-allocation purposes, pursuant to Attachment R for Hetch Hetchy Enterprise assets, or as Regional or Retail for Water Enterprise assets.
5. Project schedule information that forms the basis for project planning if available.
6. Total project budget estimate.

H. **Additional Contents of Draft 10-Year CIP.** The draft 10-Year CIP made available to BAWSCA and the Wholesale Customers shall also include the following:

1. A discussion of any changes to projects in the previously adopted 10-Year CIP, the reasons for such changes, any impact of the proposed changes on the SFPUC's ability to achieve the Level of Service Goals

and Objectives, and the SFPUC's proposal for meeting the specific Level of Service Goals and Objectives in question.

2. A discussion of factors that have influenced the 10-Year CIP budget or identified projects, or have the potential to influence the overall budget or the number, cost and scale of identified projects, such as rate increase considerations, local rate setting policies, etc.
3. A discussion of how the CIP will be staffed.
4. A cash flow estimate for each project included as part of the first five years of the 10-Year CIP that considers historical spending and changes in the amount of work to be done.
5. Project spreadsheets that separate new projects from existing projects.
6. A summary roll-up for Regional costs, including all programmatic costs budgeted in the 10-Year CIP.

I. **Quarterly Reporting and Meetings.**

1. **CIP Quarterly Projects Reports.** The SFPUC shall include within the CIP Quarterly Projects Reports a detailed status update of each Regional project in the 10-Year CIP that has an estimated cost greater than \$5 million and a summary of the work completed to date for such projects. The CIP Quarterly Projects Reports shall focus on the first two years' projects in the 10-Year CIP, but shall also demonstrate a connection to the 10-Year CIP asset classification and the Level of Service Goals and Objectives. The CIP Quarterly Projects Reports shall identify any Regional project in the 10-Year CIP with an estimated cost greater than \$5 million that is behind schedule, and, for each project so identified, shall describe the SFPUC's plan and timeline for either making up the delay or adopting a revised project schedule. In each fourth quarter of the fiscal year CIP Quarterly Projects Report, the SFPUC will also address the status of Regional projects in the 10-Year CIP that have an estimated cost of less than \$5 million, noting any such projects that are behind schedule and describing the SFPUC's plan and timeline for either making up the delay or adopting a revised project schedule.

2. **Quarterly Meetings.** If requested by BAWSCA, the SFPUC shall hold quarterly meetings with BAWSCA to review each CIP Quarterly Projects Report, during which the SFPUC shall present information and detail about the individual projects and overall implementation of the 10-Year CIP, as well as the need for re-prioritization and/or the proposal

of new candidate projects for consideration as part of the next update of the 10-Year CIP. As part of the meeting held in each fourth quarter of the fiscal year, the SFPUC shall provide additional information and detail regarding the CIP development schedule and associated coordination proposed with BAWSCA.

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 or omitted 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, 525 Golden Gate Avenue, 13th Floor, San Francisco, California 94102, 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. 8.04 Administrative Matters Delegated to BAWSCA

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. In 2014, all twenty-six Wholesale Customers adopted resolutions delegating authority to BAWSCA to initiate, defend and settle arbitration for the matters that, pursuant to Section 8.01 of this Agreement, are subject to mandatory, binding arbitration.

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. Preservation of Water Rights; Notice of Water Rights Proceedings

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
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94123

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 650
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 R, 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. 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. City of Hayward

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. City of San Jose and City of Santa Clara

A. **Continued Supply on Temporary, Interruptible Basis.** 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 2028 using the process set forth in Section 4.05, or (2) does not elect to take either city on as a permanent customer in 2028, that it is entitled to permanent customer status, pursuant to the Act or any other federal or state law. Santa Clara's reservation of rights is limited to its existing Service Area A, as shown on Attachment Q-2. Service Area B, south of Highway 101, was added in 2018 solely for the operational convenience of Santa Clara. Santa Clara waives its right to make claims described in this Section 9.06.B and Section 8.07.B.3 with respect to Service Area B. 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.

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RESOLUTION NO. 4863

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ADOPTING A WATER RIGHTS TRANSFER AGREEMENT WITH THE CITY OF MOUNTAIN VIEW FOR 1 MGD OF WATER FOR \$5 MILLION

WHEREAS, the City of East Palo Alto relies solely on the San Francisco Public Utilities Commission (SFPUC) for water supply and does not have access to other major sources of water supplies or water suppliers; and

WHEREAS, the City of East Palo Alto is a permanent member of the Bay Area Water Supply and Conservation Agency (BAWSCA) and signatory to the 2009 Water Supply Agreement between the SFPUC and its wholesale customers (the BAWSCA members); and

WHEREAS, the City of East Palo Alto has an Individual Supply Guarantee (ISG) of 1.963 MGD pursuant to the 2009 Water Supply Agreement; and

WHEREAS, the City of East Palo Alto has one of the lowest gross per capita usage in BAWSCA and one of the lowest in the State of California; and

WHEREAS, the City of East Palo Alto has exceeded its normal year Individual Supply Guarantee four (4) years between 2001 and 2015, and on average used approximately 92% of the normal year Individual Supply Guarantee; and

WHEREAS, a water shortfall has been identified in the 2005, 2010, 2013, and 2015 Urban Water Management Plans, the Water Supply Assessment for the 2012 Ravenswood Business District (RBD) 4 Corners Transit Oriented Development Specific Plan, and the 2016 General Plan Update Water Supply Assessment; and

WHEREAS, the certified EIR for the RBD 4 Corners Transit Oriented Development Specific Plan included the mitigating Specific Plan policy UTIL-2.2, which specified that prior to project approval, there must be proof of sufficient water supply or no net increase in water demand; and

WHEREAS, the Water Supply Assessment for the General Plan Update identified the need for up to an additional 1,666 Acre Feet Year (AFY) or 1.5 MGD to support the balanced growth envisioned in the adopted Ravenswood/4 Corners Specific Plan and Draft General Plan update; and

WHEREAS, the lack of water supply has immediate negative impacts on the City's ability to develop affordable housing and achieve its economic development goals; and

WHEREAS, on April 19, 2016, the City of East Palo Alto adopted Resolution No. 4723, that authorized staff to advocate for an additional 1.5 MGD of water supply from SFPUC and BAWSCA partners; and

WHEREAS, on July 19, 2016, the City of East Palo Alto adopted Urgency Ordinance No. 399 that prohibited new or expanded water connections; and

WHEREAS, the City is working on addressing its water supply challenges by pursuing a water transfer from other BAWSCA members, rehabilitating Gloria Way Well and Pad D, and designing three emergency interties with other water suppliers; and

WHEREAS, the 2009 Water Supply Agreement contains provisions for the transfer of Individual Water Supply Guarantees among SFPUC wholesale customers; and

WHEREAS, the City of East Palo Alto seeks to add 1.5 MGD to its Individual Supply Guarantee; and

WHEREAS, on May 23, 2017, the Mountain View City Council authorized its City Manager to execute a water rights transfer agreement with the City of East Palo Alto; and

WHEREAS, on June 20, 2017, the City of East Palo Alto adopted a Negative Declaration for a Water Rights Transfer of up to 1.5 MGD; and

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO hereby authorizes the City Manager to execute a Water Rights Transfer Agreement with the City of Mountain View, in a form substantially similar to the Agreement attached hereto as Exhibit A, and incorporated by this reference, subject to minor modifications approved by the City Manager or City Attorney, to execute the permanent transfer of water.

ADOPTED this 20th day of June 2017, by the following vote:

AYES: MOODY, ABRICA, GAUTHIER, ROMERO, RUTHERFORD

NOES:

ABSENT:

ABSTAIN:

SIGNED:

Larry J. Moody, Mayor

ATTEST:

APPROVED AS TO FORM:

Terrie Gillen, Deputy City Clerk

Rafael E. Alvarado Jr., City Attorney

AGREEMENT FOR THE PERMANENT TRANSFER OF WATER RIGHTS
BETWEEN THE CITY OF MOUNTAIN VIEW
AND THE CITY OF EAST PALO ALTO

This Agreement is dated for identification this ____ day of May 2017, by and between the City of Mountain View, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter “Mountain View”), and the City of East Palo Alto, whose address is 2415 University Avenue, East Palo Alto, California, (hereinafter “East Palo Alto”).

1. Background and Purpose

East Palo Alto and Mountain View are parties to the *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* [“Water Supply Agreement”] and are each a Wholesale Customer as defined by the Water Supply Agreement attached hereto as Exhibit A. As set forth in the Water Supply Agreement, the San Francisco Public Utilities Commission (“SFPUC”) guarantees Mountain View an annual individual supply (“Individual Supply Guarantee”) of 6,567,648 HCF [hundred cubic feet], also expressed as 13.460 million gallons per day [“MGD”], and East Palo Alto an individual supply of 957,813 HCF, also expressed as 1.963 MGD. Section 3.04 of the Water Supply Agreement authorizes a Wholesale Customer to permanently transfer a portion of its Individual Supply Guarantee to another Wholesale Customer. This Agreement sets forth the terms and conditions for the sale and permanent transfer by which Mountain View will transfer of all right, title, and interest to 487,934 HCF (also expressed as one (1) MGD) of its annual Individual Supply Guarantee to East Palo Alto [the “Transfer”].

2. Covenants of East Palo Alto

- a. East Palo Alto agrees to pay Mountain View Five Million Dollars (\$5,000,000.00) (Purchase Price) for the Transfer.
- b. East Palo Alto will pay the full amount of the Purchase Price to Mountain View pursuant to the instructions provided by Mountain View under paragraph 3.b. Payment is subject to satisfaction of the conditions precedent specified in paragraph 5 and will be made not more than 60 days following the date the SFPUC approves the Transfer, unless Mountain View specifies a later date in the instructions.

3. Covenants of Mountain View

- a. Mountain View will permanently transfer to East Palo Alto all right, title, interest to 487,934 HCF (one (1) MGD) of Mountain View’s Individual Supply Guarantee pursuant to the Water Supply Agreement, subject to approval of the Transfer by the SFPUC as provided in paragraph 6.a. and payment of the Purchase Price.
- b. Mountain View will provide to East Palo Alto written instructions, consistent with the terms of this Agreement, for payment of the Purchase Price. The instructions will be provided not more than seven (7) days following the Approval Date of the Transfer.

4. Approval by San Francisco Public Utilities Commission

- a. Within five (5) business days of the execution of this Agreement, East Palo Alto will provide the notice to the SFPUC required by Section 3.04 D of the Water Supply Agreement. The notice may include a copy of this Agreement. East Palo Alto will also promptly provide additional information reasonably required by the SFPUC as necessary to evaluate the operational impacts of the transfer.
- b. The Approval Date of the Transfer is the earlier of the date the SFPUC acts to approve the Transfer or the date the Transfer is deemed approved because the SFPUC has failed to act on the notice within 60 days after it is submitted.
- c. East Palo Alto will provide the notice required by Section 3.04 E. of the Water Supply Agreement on behalf of both itself and Mountain View.

5. Conditions Precedent to Payment

- a. Each of the following is a condition precedent to payment:
 1. If either party files a notice authorized or required by Public Resources Code § 21152, then passage of the time period specified by Public Resources Code § 21167 (b) or (c) (as applicable) without the commencement of an action subject to the limitations of §21167.
 2. If an action is properly commenced within the time period referenced in paragraph 5.a.1, then the date of resolution of the action by dismissal, final judgement by the trial court, or other disposition favorable to the parties.
 3. Approval by the SFPUC pursuant to Section 3.04 of the Water Supply Agreement.

6. General Provisions

- a. Subject to the provisions in Paragraph 5 above, the Transfer will be effective upon approval by the SFPUC pursuant to Section 3.04 of the Water Supply Agreement and payment by East Palo Alto to Mountain View of the Purchase Price.
- b. The parties will cooperate in good faith to fully implement this Agreement and will execute such supplemental or additional agreements as may be appropriate or necessary for full implementation of their mutual intentions. The parties will jointly defend this Agreement against any third-party challenge, and with respect to that defense will each bear their own attorneys' fees and other defense costs.
- c. Except for the Transfer, nothing in this Agreement is intended to affect the rights or obligations of either East Palo Alto or Mountain View under the Water Supply Agreement. Because the Transfer is permanent, Mountain View will have no claim to the amount of the Transfer in any extension of the Water Supply Agreement or any similar subsequent or replacement agreement. Following the Transfer, the adjusted Individual Supply Guarantees of East Palo Alto

and Mountain View remain subject to the possibility of pro rata reduction in accordance with Section 3.02.C. and 3.04.F. of the Water Supply Agreement.

d. Time is of the essence in this Agreement. Any reference to days means calendar days unless otherwise specifically stated.

e. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified, amended, or altered except in writing signed by a person authorized to do so in accordance with the laws relating to approval and execution of contracts by the party.

f. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party because of the extent to which each party participated in the drafting of the contract.

g. Each party hereto declares and represents that in entering this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent, or attorney of any other party.

h. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes will be in the County of Santa Clara or the County of San Mateo, California, subject to transfer to a neutral county in accordance with law. Neither party will object to a motion by the other to transfer a case to a neutral county. Before initiation of any litigation regarding this agreement, the parties will use mediation in a reasonable attempt to resolve the dispute.

i. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.

j. This Agreement is effective as of the day when it has been executed on behalf of each of the parties at set forth below.

7. Hold Harmless.

a. To the fullest extent permitted by law, East Palo Alto hereby agrees to and shall indemnify, defend, and hold Mountain View, its officers, employees, agents, and volunteers harmless from any liability for damage or claims for damage for personal injury, including, but not limited to, death and/or property damage related to the Transfer and resulting or claim to have resulted from an act or omission of East Palo Alto or its officers, employees, agents, and volunteers.

b. To the fullest extent permitted by law, City of Mountain View hereby agrees to and shall indemnify, defend, and hold East Palo Alto, its officers, employees, agents, and volunteers harmless

from any liability for damage or claims for damage for personal injury, including, but not limited to, death and/or property damage related to the Transfer and resulting or claimed to have resulted from an act or omission of Mountain View or its officers, employees, agents, and volunteers.

CITY OF EAST PALO ALTO

CITY OF MOUNTAIN VIEW

By: _____
Carlos Martínez
City Manager

By: _____
Daniel H. Rich
City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Rafael E. Alvarado Jr.
City Attorney

Jannie L. Quinn
City Attorney

Financial Approval:

Patty J. Kong
Finance and Administrative Services
Director

RESOLUTION NO. 4963

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR
THE PERMANENT TRANSFER OF 0.5 MGD OF THE CITY OF PALO ALTO'S
INDIVIDUAL SUPPLY GUARANTEE TO THE CITY OF EAST PALO ALTO**

WHEREAS, the City of East Palo Alto relies solely on the San Francisco Public Utilities Commission, (SFPUC) for water supply and does not have access to other major sources of water supplies or water suppliers; and

WHEREAS, the City of East Palo Alto is a permanent member of the Bay Area Water Supply and Conservation Agency (BAWSCA) and signatory to the 2009 Water Supply Agreement between the SFPUC and its wholesale customers (the BAWSCA members); and

WHEREAS, the 2009 Water Supply Agreement contains provisions allowing for the permanent transfer of Individual Water Supply Guarantees among SFPUC wholesale customers; and

WHEREAS, the City of East Palo Alto had an Individual Supply Guarantee (ISG) of 1.963 MGD pursuant to the 2009 Water Supply Agreement; and

WHEREAS, the City of East Palo Alto has one of the lowest gross per capita usage in BAWSCA and one of the lowest in the State of California; and

WHEREAS, the City of East Palo Alto exceeded its normal year ISG four (4) years between 2001 and 2015 and on average used approximately 92% of the normal year ISG; and

WHEREAS, a water shortfall has been identified in the 2005, 2010, 2013, and 2015 Urban Water Management Plans; the Water Supply Assessment for the 2012 Ravenswood Business District 4 Corners Transit Oriented Development Specific Plan; and the 2016 General Plan Update Water Supply Assessment; and

WHEREAS, the Water Supply Assessment for the General Plan Update identified the need for up to an additional 1,666 Acre Feet Year (AFY) or 1.5 MGD to support the balanced growth envisioned in the adopted Ravenswood/4 Corners Specific Plan and Draft General Plan update; and

WHEREAS, the lack of water supply has immediate negative impacts on the City's ability to develop affordable housing and achieve its economic development goals; and

WHEREAS, on December 14, 2014, the City of East Palo Alto accepted the Water Safety Strategy Blueprint that outlined the challenges and identified potential solutions; and

WHEREAS, at the January 20, 2016 City Council Strategic Retreat, staff presented workplans that included working on the groundwater wells and implementing a strategy for a water transfer; and

WHEREAS, on April 19, 2016, the City of East Palo Alto adopted Resolution No. 4723, that authorized staff to advocate for an additional 1.5 MGD of water supply from SFPUC and BAWSCA partners; and

WHEREAS, on July 19, 2016, as a result of a water supply shortage, the City Council of the City of East Palo Alto adopted Urgency Ordinance No. 399 that temporarily prohibits new or expanded water connections; and

WHEREAS, on December 6, 2016, the City of Palo Alto approved a Colleagues Memo to review the possibility of transferring a portion of its ISG to the City of East Palo Alto; and

WHEREAS, on May 23, 2017, the Mountain View City Council authorized its City Manager to execute a water rights transfer agreement with the City of East Palo Alto; and

WHEREAS, on June 20, 2017, the City of East Palo Alto adopted a Negative Declaration for a Water Rights Transfer of up to 1.5 MGD; and

WHEREAS, on June 20, 2017, the City of East Palo Alto authorized its City Manager to execute a Water Rights Transfer Agreement with the City of Mountain View for a transfer of 1 MGD; and

WHEREAS, on May 7, 2018 the City Council of the City of Palo Alto authorized the City of Palo Alto city manager to execute an agreement for the permanent transfer of 0.5 MGD of Palo Alto's ISG to the City of East Palo Alto and adopted an addendum to the Negative Declaration adopted by the City of East Palo Alto; and

WHEREAS, the City of East Palo Alto seeks to add 0.5 MGD to its ISG of 2.963 MGD to increase it to 3.463 MGD; and

WHEREAS, the City of East Palo Alto and the City of Palo Alto have identified a number of public benefits in furtherance of common interests from this water transfer; and

WHEREAS, with the additional 0.5 MGD transfer from the City of Palo Alto, the City of East Palo Alto now can use the Gloria Way Well and Pad D groundwater wells on a limited basis to preserve their operational capacity as emergency backup wells, thus protecting our cities shared underground aquifer; and

WHEREAS, staff from both cities continue to work together, ensuring infrastructure spanning the two cities support compatible uses, including: the restoration of an emergency water intertie from Palo Alto to East Palo Alto Woodland Avenue, the extension of a water line for recycled water across the Friendship Bridge, as well as the development of a jointly supported preferred alternative design for the reconstructed Newell Road Bridge; and


WHEREAS, the Newell Road Bridge reconstruction project is undergoing technical studies required for environmental clearance, and staffs from both cities are working toward a joint recommendation of a bridge alternative that maintains compatibility with the adjacent neighborhoods and avoids the potential to attract cut-through traffic.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY authorizes the City Manager to execute an agreement for the permanent transfer of 0.5 MGD of the City of Palo Alto's ISG to the City of East Palo Alto, in a form substantially similar to the Agreement attached hereto as Exhibit A and incorporated by this reference, subject to minor modifications approved by the City Manager and City Attorney, to execute the permanent transfer of water.

PASSED AND ADOPTED this 15th day of May 2018, by the following vote:

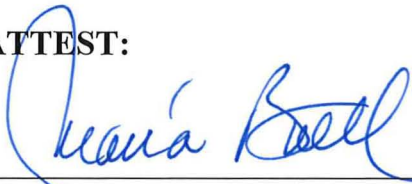
AYES: ABRICA, GAUTHIER, MOODY, ROMERO
NOES: NONE
ABSENT: RUTHERFORD
ABSTAIN: NONE

SIGNED:



Ruben Abrica, Mayor

ATTEST:



María Buell, Deputy City Clerk

APPROVED AS TO FORM:



Rafael E. Alvarado Jr., City Attorney

**AGREEMENT FOR THE PERMANENT TRANSFER OF A PORTION OF AN
INDIVIDUAL SUPPLY GUARANTEE FROM
THE CITY OF PALO ALTO TO THE CITY OF EAST PALO ALTO**

THIS PERMANENT TRANSFER AGREEMENT (the “**Agreement**”) is dated _____, 2018 and is between **CITY OF PALO ALTO (“Palo Alto”)**, a California chartered municipal corporation located at 250 Hamilton Avenue, Palo Alto, CA 94301, and the **CITY OF EAST PALO ALTO (“East Palo Alto”)**, a municipal corporation, located at 2415 University Avenue, East Palo Alto, CA 94303. Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. Palo Alto and East Palo Alto are signatories to the “Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County”, executed in July 2009 (“2009 WSA”), and each are Wholesale Customers as defined in the WSA.

B. The 2009 WSA guarantees Palo Alto an Individual Supply Guarantee of 8,331,697 HCF (“Hundred Cubic Feet”), also expressed as 17.075 million gallons per day (“MGD”), and guarantees East Palo Alto an Individual Supply Guarantee of 1,445,747 HCF, or 2.963 MGD.

C. Section 3.04 of the 2009 WSA authorizes the permanent transfer of Individual Water Supply Guarantees among Wholesale Customers.

D. The City of Palo Alto and the City of East Palo Alto have determined to enter into this Agreement in order to facilitate the permanent transfer of a portion of Palo Alto’s Individual Supply Guarantee, in the quantity of approximately 243,967 HCF of water, or .5 MGD, to East Palo Alto at no cost, in accordance with this terms of the 2009 WSA and this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. Definitions. Capitalized terms used in this Agreement have the same meaning as identified in the 2009 WSA, unless otherwise noted.

SECTION 2. Permanent Transfer. Palo Alto will permanently transfer to East Palo Alto all right, title and interest to 243,967 HCF (.5 MGD) of Palo Alto’s Individual Supply Guarantee at no cost, as authorized by the 2009 WSA. The transfer is subject to approval by the San Francisco Public Utilities Commission (“SFPUC”) under Section 3.04 of the 2009 WSA, and the quantity transferred shall remain subject the pro rata reduction described in Section 3.02(C). Except for the transfer as described in this Section 2, nothing in this Agreement is intended to affect the rights or obligations of either Palo Alto or East Palo Alto under the 2009 WSA.

SECTION 3. Effective Date. The transfer shall become effective upon approval by the SFPUC (“the Approval Date”) as described in Section 4 of this Agreement.

SECTION 4. Approval by San Francisco Public Utilities Commission. The Parties shall comply with the additional terms of approval included in the 2009 WSA as follows:

A. Within ten (10) business days after the execution of this Agreement, both Parties shall provide notice to the SFPUC as required by Section 3.04(D) of the WSA, 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 Parties resulting from the transfer.

B. The Approval Date of the transfer shall be the earlier of the date the SFPUC acts to approve the transfer, or the date the transfer is deemed approved because the SFPUC has failed to act on the notice within sixty (60) days after it is submitted, as described in Section 3.04(D) of the WSA.

C. Within thirty (30) days after the Approval Date, both Parties shall provide notice to the SFPUC and the Bay Area Water Supply and Conservation Agency as required by Section 3.04(E).

SECTION 5. Public Purpose. The Parties’ implementation of this Agreement furthers a public purpose in that Palo Alto has a local interest in promoting the economic development and public health of the region through responsible water use; the economic and environmental sustainability of East Palo Alto is important to Palo Alto due to the geographic interconnectedness of the two neighboring municipalities; and East Palo Alto is committed to water conservation and responsible development as demonstrated in the “Water Conservation” section of the East Palo Alto Municipal Code, the implementation of the East Palo Alto Urban Water Management Plan, and the development goals set forth in the 2035 East Palo Alto General Plan.

SECTION 6. Indemnity.

A. To the fullest extent permitted by applicable law, East Palo Alto will indemnify, defend and hold harmless Palo Alto and its City Council, commissioners, officers, agents, employees, contractors and volunteers from any and all demands, claims, judgments, legal or administrative proceedings, losses, costs, penalties, fines, liens, damages and liabilities of any kind (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to East Palo Alto’s negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the activities exclusively performed by East Palo Alto under this Agreement, including but not limited to obtaining all approvals necessary to execute this Agreement, except for claims, liabilities and damages caused by Palo Alto’s sole negligence or willful misconduct.

B. To the fullest extent permitted by applicable law, Palo Alto will indemnify, defend and hold harmless East Palo Alto and its City Council, commissioners, officers, agents, employees, contractors and volunteers from any and all demands, claims, judgments, legal or administrative proceedings, losses, costs, penalties, fines, liens, damages and liabilities of any kind (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to Palo Alto's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the activities exclusively performed by Palo Alto under this Agreement, including but not limited to obtaining all approvals necessary to execute this Agreement, except for claims, liabilities and damages caused by East Palo Alto's sole negligence or willful misconduct.

SECTION 7. Miscellaneous.

A. Entire Agreement. This document represents the entire agreement between the Parties in relation to the subject matter contained herein. All prior negotiations and written and/or oral agreements between the Parties with respect to the subject matter of the agreement are merged into this Agreement.

B. Amendments. This Agreement may only be amended by a written instrument signed by authorized representatives of the Parties.

C. Governing Law, Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California. Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California.

D. Non-Discrimination. As set forth in Palo Alto Municipal Code section 2.30.510, East Palo Alto certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. East Palo Alto acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

E. Third Party Beneficiaries. This Agreement does not, and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

F. Counterparts. This Agreement may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to the Parties.

G. Authority. Each party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained in this Agreement and that the persons signing below are authorized to sign on each Party's behalf.

SECTION 8. Notices. Any notices provided herein shall be deemed received when mailed or delivered to the respective parties addressed as follows:

James Keene
City Manager
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301

Carlos Martinez
City Manager
City of East Palo Alto
2415 University Avenue, 2nd floor
East Palo Alto, CA 94303

SECTION 8. CEQA. On June 20, 2017 the Council of the City of East Palo Alto, as the lead agency reviewing the proposed transfer of up to 1.5 MGD of Individual Supply Guarantee under the SFPUC Water Supply Agreement, adopted a Negative Declaration, which contemplated the transfer of up to 1.5 MGD of contractual entitlements between "one or more willing Wholesale Customers" and East Palo Alto. The City of Palo Alto subsequently prepared an addendum to East Palo Alto's Negative Declaration, which Palo Alto's City Council considered and approved together with the Negative Declaration on May 7, 2018.

SECTION 9. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the Cities of Palo Alto and East Palo Alto have executed this Agreement effective on the date set forth in the introductory clause.

CITY OF PALO ALTO

CITY OF EAST PALO ALTO

City Manager

City Manager

Director of Utilities

Director of Public Works

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

City Attorney