



City of Palo Alto

City Council Staff Report

(ID # 12251)

Report Type: Consent Calendar

Meeting Date: 8/9/2021

Summary Title: East Palo Alto Water Intertie Agreement

Title: Approve an Agreement Between the City of Palo Alto and the City of East Palo Alto for a Limited Emergency Water Supply Intertie

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the City Council approve and authorize the City Manager or their designee to execute an intertie agreement with the City of East Palo Alto to provide limited water supply due to an emergency, disaster or other temporary service disruption, via temporarily reconnecting the Original Intertie located at Woodland Avenue and University Avenue in the City of East Palo Alto.

Background

The City of Palo Alto (CPA) and the City of East Palo Alto (EPA) are neighboring cities that share a boundary and a namesake. Each City has its own water system to provide water service to its customers. CPA has an Individual Supply Guarantee (ISG), a contractual right to purchase water from San Francisco's Hetch Hetchy water system, of about 17 million gallons per day (MGD). Therefore, CPA historically had greater access to water, compared to EPA's ISG of about 2 MGD. On May 15, 2018, the Cities executed an agreement to transfer a portion of CPA's ISG, 0.5 MGD, to EPA ([Staff Report #9041](#)). In supporting this decision, council members reflected on building a spirit of cooperation between the two cities. In keeping with that goal, an additional action has been proposed: reestablishing an intertie connection between the two cities' water systems, so that the cities can transfer water to each other in an emergency, disaster, or other temporary service disruption.

An intertie is an interconnection permitting passage of a commodity between two or more utility systems. There is an existing intertie connection (Original Intertie) at the intersection of Woodland Avenue and University Avenue in EPA. However, this intertie was disconnected about 20 years ago and never re-connected. Until a New Intertie is operable, the parties have agreed to permit EPA to temporarily connect at the Original Intertie, until EPA builds a New Intertie at a location agreed upon with CPA.

Discussion

Project Description

In the next 6-12 months, EPA will reconnect the Original Intertie at their cost. They will install a new meter vault and appurtenances as shown in the Intertie Details ([Linked Document](#)) of the Intertie Agreement. Complying with CPA construction standards, EPA will handle all design, construction, environmental review and permitting. CPA will own a gate valve, valve padlock, and flow meter in the meter vault, allowing CPA staff to open and shut the connection as needed and to track the volume of water transferred to EPA so that EPA can reimburse CPA for the wholesale cost of actual water used. CPA and EPA will share the maintenance costs of the vault equally.

By the end of 2025, EPA will design and construct the New Intertie, on University Avenue east of Crescent Drive (the location shown in the Map of the Intertie Agreement) ([Linked Document](#)). EPA will handle all design, construction, environmental review and permitting. CPA staff will have the opportunity to review the design ([Linked Document](#)) to ensure the New Intertie will comply with CPA construction standards. The vault design will include flow meters for CPA and EPA, allowing for transfer of water in either direction. Before the New Intertie is constructed, CPA and EPA will amend the terms of the Intertie Agreement to reflect the use and operation of the New Intertie and the decommissioning of the Original. CPA will be responsible for its pipes up to the New Intertie location, and EPA will be responsible for their pipes between the New Intertie and Original Intertie.

Bid Process

There is no bid process for this project, as there is no construction work for CPA to perform. EPA will reconnect the Original Intertie at their own expense. They will also install the New Intertie by the end of 2025 at their own expense. EPA will be responsible for the bid processes on both projects.

Resource Impact

This Intertie Agreement has minimal financial impacts, as CPA will not be performing any new construction work. CPA will take on new maintenance costs for a 6" gate valve, a valve padlock, and a 6" flow meter, as well as 50% of the costs of maintaining a new 36" x 60" vault, to be constructed by EPA. CPA will also keep maintenance responsibility for about 40 linear feet of 6" cast iron pipe between water valve 1815 and the New Intertie location, while EPA will keep maintenance responsibility for about 167 linear feet of 6" cast iron pipe between the New Intertie and Original Intertie locations. The frequency of maintenance for the CPA intertie facilities will be on an annual basis and cost less than \$600 per year. See the Map of the Intertie Agreement ([Linked Document](#)).

Policy Implications

Per the Intertie Agreement, *Section 1. Interconnection Location*, the Original Intertie "shall operate only when CPA is capable of providing supplemental water above and beyond that

which is required to service its needs,” and such water shall be “supplemental water for a limited period of time due to an emergency, disaster, or other temporary service disruption to [EPA’s] customers.” In the following clause, *Section 2. Water Supply is for a Limited Purpose Only*, the agreement states that “nothing herein shall be deemed to constitute a dedication of the water supply of either Party to service the territory of the other Party or to constitute a commitment to supply water to the other Party as a regular customer.” Given these provisions, the reconnection of an intertie with EPA does not interfere with CPA’s ability to serve its customers, since no commitment is made to provide water when CPA does not have water to spare. CPA will still be able to meet California Water Board’s Division of Drinking Water recommended emergency water storage volume of 8 hours of maximum day water demand while maintaining firefighting reserves.

In addition, reestablishing the intertie with EPA follows through on the “good neighbor” intent of intercity cooperation supported by council members who voted on March 7, 2018, to transfer 0.5 MGD of CPA’s individual supply guarantee to EPA. EPA does not have many tank reservoirs for water storage, so use of an intertie may also reduce EPA’s need to pump groundwater during an emergency. This could also help CPA, since groundwater pumping in EPA could reduce emergency groundwater supplies in CPA and contribute to saltwater intrusion into CPA’s groundwater.

Stakeholder Engagement

As part of the work on the 2018 Transfer of Individual Supply Guarantee agreement, the following collaboration was noted in the [minutes](#) of the May 7, 2018 CPA City Council meeting: “Discussions between the EPA and Palo Alto city managers have identified a number of public benefits that would accrue through a 0.5 MGD transfer and additional collaboration between the two cities. In addition to the social and economic benefit to EPA from appropriate development and EPA’s limited groundwater use, staffs from EPA and Palo Alto are continuing to work on ensuring infrastructure spanning the two cities also supports compatible uses.” At that City Council meeting, council members, members of the public, and the EPA mayor had the opportunity to speak about their opinions on cooperation between CPA and EPA in the area of water supply. This Intertie Agreement follows from the earlier Transfer of Individual Supply Guarantee agreement, by updating the water “infrastructure spanning the two cities”. The concern raised in that 2018 council meeting regarding: ‘giving away a valuable water right without compensation’ does not apply to the Intertie Agreement, since Palo Alto’s water allocation does not change, and any water transferred through the intertie from CPA to EPA must be paid for by EPA.

Environmental Review

The Council’s approval of this Intertie Agreement does not require the City to conduct California Environmental Quality Act (CEQA) review, since it does not meet the definition of a “project” under section 21065 of the CA Public Resources Code, nor does it involve any construction on the part of CPA. Under *Section 3 of the Intertie Agreement, Reactivation of Original Intertie Connection*, EPA will “conduct the environmental review and obtain all

necessary permits and approvals” for the Original Intertie work. EPA’s approval of the Intertie Agreements will likely be categorically exempt from CEQA review under CEQA Guidelines section 15401 (repair, maintenance or minor alteration of existing facilities).

Attachments:

- Attachment A: Agreement

**AGREEMENT BETWEEN THE CITY OF PALO ALTO
AND THE CITY OF EAST PALO ALTO FOR
LIMITED EMERGENCY WATER SUPPLY INTERTIE**

THIS AGREEMENT is made as of this _____ day of _____ 20__ ("Effective Date"), by and between the City of Palo Alto, California, a chartered California municipal corporation with its primary business address at 250 Hamilton Avenue, Palo Alto California 94301 ("PA") and the City of East Palo Alto, a general law California municipal corporation with its primary business address at 2415 University Avenue, Second Floor, East Palo Alto, California 94303 ("EPA"). PA and EPA may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

1. The Parties provide water service to their respective, adjacent service areas in Palo Alto and East Palo Alto; and
2. On May 15, 2018, the Parties executed an 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; and
3. Each Party has its own water supply and under usual and ordinary operating conditions neither Party would have occasion to purchase water from the other Party; and
4. An intertie exists between the Parties' water distribution systems on Woodland Avenue in East Palo Alto, at the intersection of University Avenue and Woodland Avenue and shown on the attached map (Exhibit 1) as "Original Intertie", but that intertie has been disconnected since approximately 2000 and has not been used since; and
5. In the next 6 to 12 months, East Palo Alto plans to temporarily reconnect the Original Intertie at its cost, to be available for use until the New Intertie is connected; and
6. By December 31, 2025, East Palo Alto intends to design, purchase, and construct a new interconnection farther south, on University Avenue, (the "New Intertie") approximately 167' south of the Original Intertie (shown on the attached map, Exhibit 1, and in detail on Exhibit 2), and the Parties anticipate that they will amend this Agreement to reflect the use and operation of the New Intertie at the appropriate time; and

7. The Parties determined it to be in the public interest to arrange for a connection between their water distribution systems so that PA will have the ability to provide EPA with water in an emergency or if water is otherwise unavailable; and
8. While the Parties agree that construction of an interconnection at the New Intertie location is preferable, due to the age and condition of approximately 167' of cast iron pipe under East Palo Alto's control that runs from the Original Intertie to the proposed New Intertie, Palo Alto is willing to allow a temporary interconnection at the Original Intertie, until East Palo Alto constructs the New Intertie, so long as the conditions stated within this Agreement are met; and
9. The Parties desire to enter into an agreement to establish the terms and conditions for the construction, maintenance, and use of the Original Intertie.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Interconnection Location.** The Original Intertie is generally described as follows and is shown on the attached map (Exhibit 1). The Original Intertie is located on the south side of Woodland Avenue to the west of the intersection with University Avenue and is anticipated to be activated in 2021. The Original Intertie will include the following facilities, which are shown in detail on Exhibit 2: a 6" flow meter, meter vault, flushing pipes, traffic rated cover, check valve and gate valves.

In the event EPA requires supplemental water for a limited period of time due to an emergency, disaster or other temporary service disruption to its customers, EPA may request supplemental water from PA via the Original Intertie pursuant to Section 5 of this Agreement. When the Original Intertie is activated, it shall operate only when PA is capable of providing supplemental water above and beyond that which is required to service its needs.

2. **Water Supply is for a Limited Purpose Only.** Nothing herein shall be deemed to constitute a dedication of the water supply of either Party to service the territory of the other Party or to constitute a commitment to supply water to the other Party as a regular customer.

3. **Reactivation of Original Intertie Connection.** EPA will assume primary responsibility for the design, purchase of necessary materials, and construction required to reactivate the Original Intertie. More specifically, EPA will complete the following tasks:

- A. Prepare contract specifications and drawings of the Original Intertie, consistent with current PA Utility Standards; and
- B. Conduct the environmental review and obtain all necessary permits and approvals; and
- C. Solicit bids, evaluate bids, and award the design and construction contract to the lowest responsible and responsive bidder; and

- D. Perform inspection and construction oversight; and
- E. Test and accept the completed work, and provide final 'as-built' documents to PA.

EPA will pay for all costs pertaining to the design, materials purchase, and construction of the Original Intertie, and will share all contract specifications, drawings, bid solicitations and proposals with PA for PA's review and approval before finalizing them. EPA will connect the Original Intertie to the PA distribution system in accordance with PA standard specifications and to EPA's distribution system in accordance with EPA standard specifications. Upon completion of construction, EPA shall transfer ownership of the Original Intertie gate valve, lock, and meter, shown as item 1 and 2 on Exhibit 2, to PA. EPA will retain ownership of the facilities up to the EPA side of the Original Intertie meter, including the meter vault.

4. **Maintenance of Original Intertie.**

A. **PA Responsibility.** Once the Original Intertie is completed to the satisfaction of both Parties,

- a. PA, at its sole cost, will be responsible for maintaining and repairing the pipelines, 6" gate valve padlock, and 6" flow meter as shown on Exhibit 2 as Items 1 and 2 at the Original Intertie location, up to the New Intertie location, except for the 167' of pipeline shown on the attached map (Exhibit 1) in green.
- b. The cost of maintaining and repairing the vault will be shared equally (50% each) between EPA and PA. EPA will pay PA its share for the cost for maintenance and repair of the vault as costs are incurred by PA. PA will provide EPA with written documentation of actual costs incurred that describes all materials purchased and services provided, including the persons providing the services and their hourly rates. EPA will pay fifty percent (50%) of the approved invoice within sixty (60) days from the date of receipt of the invoice.

B. **EPA Responsibility.**

- a. EPA, at its sole cost, will be responsible for maintaining and repairing all pipelines, valves, and related water system appurtenances on the Original Intertie, including the meter box, except for the 6" gate valve, padlock and 6" flow meter (shown on Exhibit 2 as Items 1 and 2). EPA will be responsible for the 167' portion of the main located within both EPA and Palo Alto between the Original Intertie and the New Intertie, which is shown on the attached map (Exhibit 1) in green.

5. **Sale of Water.**

- A. **Manner of Request for Water.** EPA ("Requester") may request to obtain water from the PA ("Supplier"), which may provide water to the Requester to the extent Supplier has water available in view of its circumstances and demands at that time as determined by the Supplier, in its sole discretion. The Requester will provide the Supplier with a written request for water with as much advance notice as possible. Verbal requests for water may be permitted if necessary, in emergencies only, and must be documented with a written request within 2 business days. Requests for water shall be delivered to the addressees listed in Section 19 of this Agreement.
- B. **Obligation to Supply Water is Limited.** The obligation to supply water hereunder is limited (1) to surplus water above and beyond that required to service the needs of the Supplier's regular customers as determined by the Supplier in its sole discretion, and (2) to a reasonable period of time to alleviate the emergency or other temporary service disruption situation. Any sale of water under this Agreement shall not be considered to be a dedication of water to either Party for growth or other purposes, or an authorization of a permanent expansion of either Party's water service area. The Supplier shall provide verbal or written agreement to the Requester prior to the delivery of water under this Agreement, and representatives of PA and EPA will be present during the commencement and cessation of delivery of water. At no time will the Requester operate the Supplier's water system appurtenances, such as valves, regulators, or hydrants.
- C. **Monitoring and Metering.** The amount of water provided by one Party to the other will be monitored, metered, and documented. Metered volumes of water provided by the Supplier shall count toward the Requester's volume of water used for purposes of reporting to the San Francisco Public Utilities Commission (SFPUC), the State Water Resources Control Board (SWRCB), the Bay Area Water Supply and Conservation Agency (BAWSCA), or any other public agency or regulatory body. Metered volumes of water provided by the Supplier shall not be construed to increase or otherwise affect the Requestor's Individual Supply Guarantee under Section 3.02 of the Water Supply Agreement executed by both Parties in July 2009, or the Agreement for the Permanent Transfer of a portion of a Portion of an Individual Supply Guarantee from the City of Palo Alto to the City of East Palo Alto executed by both Parties in 2018. The Requestor will be responsible for compliance with any reporting requirements required by Section 3.07(B)(2) of the Water Supply Agreement that may be triggered by any sale of water under this Agreement.

6. **Compensation for Water Usage.** The Requester will compensate the Supplier at the wholesale rate charged to the Supplier at the time of the delivery of the water by the San Francisco Public Utilities Commission. Charges will be made only for months in which water is

actually delivered and such payment will be made within thirty (60) sixty days after receipt of an invoice. Meter readings will be made by and at the convenience of the Supplier. The amount of water delivered shall be estimated using mutually agreeable methods, if conditions do not permit metered measurement. Water supplied pursuant to this Agreement shall be accessed only through the Original Intertie.

7. **Failure to Supply Water.** Neither Party shall be responsible for damages for any failure to supply water or for interruption of the supply provided via the Original Intertie. Notwithstanding the prior sentence, the Parties understand and agree that EPA remains solely responsible for the 167' of main currently under EPA's control that runs from the Original Intertie to the proposed New Intertie. If PA determines that the condition of the 167' of main is causing water quality problems or damaging PA's water distribution system integrity, PA may, in its sole discretion, close Valve W1815 (shown on Exhibit 1) to protect the integrity of its water system.

8. **Access to Original Intertie Location.** The representatives of the Parties shall at all times have access to the Original Intertie for the purpose of reading meter registration and/or examining the meter and valve at the Original Intertie location to ascertain whether or not they are in good condition.

9. **Compliance with Laws and Duty of Care.**

- A. Each Party will have responsibility for obtaining and maintaining all permits and preparing reports or plans as necessary to comply with current or future applicable local, state or federal regulations for the construction, repair and replacement of the facilities that each Party is responsible for maintaining as set forth in this Agreement.
- B. Each Party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that the other Party's facilities and operations are not impaired or damaged. If any occurrence or condition during operation or maintenance of the Original Intertie threatens the physical integrity or operational capacity of either Party's separate facilities, the affected Party may stop operation or maintenance of the Original Intertie in question and/or take any action that the affected Party deems necessary to protect its own separate facilities. The affected Party will give Notice to the other Party of any actions taken pursuant to this Section immediately.

10. **Records.** The Parties shall maintain accurate and complete records of the maintenance and use of the Original Intertie and shall make those records available to the other Party upon request. Each Party shall maintain records of all its costs with respect to its activities under this Agreement and make those records available to the other Party. The Parties shall retain such records for three (3) years after the termination of this Agreement.

11. **Term.** This Agreement shall begin on the date set forth in the first paragraph of this Agreement and will terminate if EPA has not completed the New Intertie by December 31, 2025. Either Party may terminate this Agreement for default by the other Party, if the defaulting

Party fails to cure the default within ninety (90) days from the date of the notice of the default, or such longer period as may be agreed to by both Parties.

12. **Non-Completion Payment.** If EPA has not completed the New Intertie by December 31, 2025, EPA agrees to pay PA's costs to disconnect the pipeline at valve W1815, shown on Exhibit 1, within thirty (30) days after receipt of an invoice from PA. This clause will survive termination of this Agreement.

13. **Quantity or Quality of Water.** Neither EPA nor PA make any representation or warranty of any kind regarding the quantity, quality, or pressure of water available at any time through the Original Intertie, except that the water provided will be in full compliance with California Department of Health drinking water requirements. It is the responsibility of the Requestor to verify the quality of water entering their system and to ensure that the interaction of the water sources does not cause water quality issues.

14. **Indemnity.**

A. **Indemnification of PA:** To the extent permitted by law, EPA agrees to protect, defend, hold harmless and indemnify PA, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which PA shall become liable arising from EPA's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by EPA pursuant to this Agreement, except for claims, liabilities and damages caused by PA's sole negligence or willful misconduct.

B. **Indemnification of EPA:** To the extent permitted by law, PA agrees to protect, defend, hold harmless and indemnify EPA, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which EPA shall become liable arising from PA's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by PA pursuant to this Agreement, except for claims, liabilities and damages caused by EPA's sole negligence or willful misconduct.

15. **Assignments and Successors in Interest.** PA and EPA bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of PA and EPA.

16. **Integrated Document — Totality of Agreement.** This Agreement embodies the agreement between PA and EPA and its terms and conditions. No other understanding, agreements, or conversations, or otherwise, with any officer, agent, or employee of PA or EPA prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement, any such verbal agreement shall be considered as unofficial information and in no way binding upon PA or EPA.

17. **No Third-Party Beneficiary.** This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

18. **Captions.** The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions or interpretation.

19. **Amendments.** This Agreement may be changed only by a written amendment signed by both of the Parties.

20. **Notice.** Any notice required or permitted to be given by this Agreement shall be in writing, delivered personally or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to PA: City of Palo Alto
 3201 East Bayshore Frontage Road
 Palo Alto, CA 94303
 Attention: Water-Gas-Wastewater Operations Manager, or
 Water Transmission Supervisor, 650-496-6932

If to EPA: City of East Palo Alto
 2415 University Avenue, 2nd Floor
 East Palo Alto, CA 94303
 Attention: Public Works Director

Either Party by notice given as described above may change the address to which notice shall thereafter be delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the day and year first above written.

CITY OF PALO ALTO

Assistant City Manager

CITY OF EAST PALO ALTO

BY: 

City Manager

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST: 
City Attorney