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AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM)

## AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM)

THIS AGREEMENT FOR LEASE OF REAL PROPERTY (WATER SYSTEM) ("Lease") is entered into as of October 1, 1997, between the CITY OF CUPERTINO, (hereinafter referred to as "City"), and SAN JOSE WATER COMPANY, a California corporation ("Lessee").

### WITNESSETH:

WHEREAS, City provides water service to approximately 4200 metered customers in the service area described in Exhibit A attached hereto (as such service area may change from time to time in accordance with this Lease, the "Service Area"); and

WHEREAS, City is the owner of certain real property, easements and rights of way and those certain pipes, mains, pumps and appurtenant facilities (including without limitation buildings, pump houses, sheds and other structures) constituting all of City's water system (the "Water System") within the Service Area and more specifically described in Exhibit B attached hereto; and

WHEREAS, City desires to lease the Water System to Lessee, and Lessee desires to lease the Water System from City, for the period and upon the other terms and conditions set forth herein;

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for good and valuable consideration, the receipt and adequacy of which the parties hereby acknowledge, City and Lessee hereby agree as follows:

#### Section 1. Lease of Water System.

City hereby leases to Lessee, and Lessee hereby leases from City, the Water System as described on Exhibit B. The Water System is leased in an "as is" condition. Neither City nor any of its agents has made any representation or warranties with respect to the Water System except as specifically set forth in this Lease. City agrees, however, to provide Lessee with copies of maps, drawings, plans and specifications of the present system, along with customer service and account records in a form agreeable to both parties, all at least thirty (30) days prior to the Closing Date defined below. Lessee agrees to use its best efforts keep all customer information confidential, whether received from City or developed during the Term of the Lease.

Section 2.     Term of Lease.

The term of the Lease of the Water System shall be twenty-five (25) years unless terminated earlier as provided in this Lease (the "Term"). The Term of this Lease shall commence on October 1, 1997 (the "Closing Date"). City and Lessee shall jointly read the meters of all customers in the Service Area within 15 business days preceding (a) the Closing Date and (b) the expiration or termination of this Lease. All monies for services rendered and water sold prior to the Closing Date meter readings and after the expiration or termination of the Lease meter readings shall be the property of the City. All monies for services rendered and water sold after the Closing Date meter readings and through the expiration or termination of the Lease meter reading shall be the property of the Lessee. Accrued expenses will be allocated in a similar manner.

Section 3.     Use of Water System.

Subject to the provisions of this Lease, Lessee agrees to use the Water System for the purpose of furnishing potable water service to City customers. Lessee agrees to furnish water, including water service for fire protection to all customers in the Service Area in accordance with the applicable rules relating to service at all times during the term of the Lease.

Notwithstanding the above, Lessee shall not serve customers outside the water system without City's written permission.

Lessee has no authority to and shall not retire, sell, transfer, convey, or encumber any real property of the Water System. Lessee has no authority to retire, sell or otherwise dispose of any personal property of the Water System without prior permission of the City.

City retains the right to utilize or continue to utilize any portion or portions of the Water System, including easements, tanks, buildings, and appurtenances for any legal purpose which does not interfere with Lessee's use of the Water System to furnish potable domestic water service to City customers.

Section 4.     Title

All Capital Improvements shall be deemed part of the Water System and title to such Capital Improvements shall immediately vest in City. Any other property added to or incorporated into the Water System by Lessee pursuant to its maintenance obligations under this Lease or which are added by new developments shall be deemed part of the Water System and title to such property shall immediately vest in City. Lessee shall not own the Water System or any part thereof or any interest therein.

Section 5. Concession Fee.

As partial consideration for this Lease, Lessee agrees to pay the City a one time concession fee (the "Concession Fee") of \$ 6.8 million upon the execution of this Lease. The Concession fee is not a security deposit and is not refundable.

Section 6. Base Rent.

As additional consideration, Lessee agrees to pay to City as annual rental (hereinafter called the "Base Rental") for the use of the Water System, the sum of \$1.00/year. The Base Rental shall be paid to City on the basis of City's fiscal year which commences July 1st and ends on June 30th.

Section 7. Operation of Water System

A. Repair, Maintenance and Operation. Lessee shall at its own expense throughout the Term of this Lease, undertake any utility plant addition, betterment, replacement, improvement, repair and perform routine and emergency maintenance of the Water System in accordance with customary utility practices and shall operate the Water System and pay all costs and expenses of operating the same (including the costs of all utilities, plant improvements, water and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that City shall be under no obligation to pay any cost or expense of any kind or character in connection with or related to the management, operation, improvement, repair or maintenance of the Water System during the Term of this Lease.

B. Customer Services Obligations: rendering monthly or bi-monthly bills to all customers receiving water service in the Service Area; payment processing; responding to customer inquiries on water service, bills, leaks or other concerns; collecting bills; processing applications for new or transfer of service; collection of customer deposits for new service; collection of construction meter deposits; and investigation of customer complaints.

C. Emergency Service Obligations: maintaining twenty-four (24) hour on-call response to emergency calls or customer inquiries; providing an emergency or natural disaster operations plan; maintaining an emergency communications system; providing or having access to equipment required to perform emergency repair work to vital system equipment and water mains; including evaluating and if necessary providing emergency diesel powered back up generator at critical pumping stations.

D. Water Quality Testing Obligations: performing, or causing to be performed, by a State of California certified laboratory, any and all water sampling, analysis, testing and reporting as required for water sources, distribution mains or customer premises, testing and reporting as required for water sources, distribution mains or customer premises, by the U.S. Environmental Protection Agency, State of California Department

of Health Services and Office of Drinking Water and the County Environmental Health Department or acts of the U.S. Congress or California Legislature; scheduling and collecting water samples to test for microbiological, inorganic and organic constituents; transportation to certified lab; preparation of monitoring plans; sample collection training; reporting to appropriate regulator(s); record keeping; analysis interpretation; special or emergency sample collection and analysis emergency notification to affected customers, if required; preparation and distribution of any and all published and distributed customer reports on water quality; new well or water source sampling and analysis; response to customer inquiries on water quality; coordination of cross-connection control and potential contamination issues; conducting annual system survey with California State Department of Health Services; obtaining permits and compliance with appropriate air district; providing hazardous materials control program, and ensuring all operator certification is in compliance with State and Federal requirements.

E. Other Service Obligations: implement a Water Conservation or Waste Water program; maintain distribution system maps and plat maps; prepare any required urban water management plans; and in general, to do all such acts and perform all such services as required to operate the Water System in a manner similar to that in which it operates its own district systems, subject; however, to the provisions of this Lease.

F. Reports: Lessee shall provide City written reports, in a form suitable to both parties, related to Lessee's operation and maintenance of the Water System, as described herein. The frequency and contents of the reports shall be as follows:

(1) Annually: summary of extraordinary maintenance, capital improvements, developer installations with job description, percentage of completion and pertinent comments relative to the project, service and complaint report with listing of customer complaints and inquiries, reason for customer contact and resolution of the matter; water quality analysis of microbiological testing.

(2) Periodically: any other report or information that is reasonably requested by City in connection with the operation and maintenance of the Water System.

G. General Operation: Unless inconsistent with the specific terms of this agreement, Lessee shall operate the Water System according to the procedures and administrative rules by which it operates its other water systems in the City of Cupertino.

## Section 8. Rates and Charges.

Lessee shall propose to City reasonable rates and charges that Lessee will impose for water service to be delivered to the customers served by the Water System. Such rates shall require approval by City, which approval shall not be unreasonably withheld. Any disapproval shall state the reasons therefor. In determining reasonable rates and charges, City shall consider all relevant information, including the California Public

Utilities Commission approved rates in similar, nearby municipalities. Lessee may ask City to approve increases in rates from time to time.

City shall act on all requests for rate increases within sixty (60) days of receipt of the request. In cases of natural disaster, other emergencies or acts of God, City recognizes that extraordinary rate relief on an expedited basis may be necessary and City agrees to expeditiously approve any such reasonably requested rate relief. In the event City does not act on any requested rate relief either within the 60 day period or on an expedited basis, as the case may be, and such rate relief is subsequently approved or ordered, the water rates and charges shall be adjusted to subsequently recover from customers over a reasonable period of time such amounts as are necessary to place Lessee in the same position it would have been had the rates been in effect from and after the end of such 60 day period.

Notwithstanding the foregoing, Lessee may upon written notice to the City, pass through to customers in the Service Area in a manner substantially similar to that permitted by the California Public Utilities Commission any increase or decrease in the cost of water or power (to the extent not already reflected in rates), as well as any new City imposed fees, charges, taxes, license or permit fees, so long as Lessee promptly passes through in a manner substantially similar to that permitted by the California Public Utilities Commission any decreases in water or power costs. Lessee shall, at City's request, provide City with any information which may reasonably request documenting any changes up or down in the cost of water or power. Lessee may also impose conservation or rationing penalties on those customers exceeding their allocations, in the event of mandatory water rationing involving penalties imposed by the Santa Clara Valley Water District.

In the event, that rates or surcharges are reduced by order of the P.U.C or voluntarily by Lessee in areas of the City, other than in the Service Area of the Lease, the Lessee shall forthwith reduce its rates or surcharges within the Service Area of the Lease by the same percentage.

#### A. Phase-in Rate and Structure

Should Lessee's rates and charges be higher than that of City's at the time of Closing Date, Lessee will perform a conversion of rate structure and phase-in rates and charges over a three year period as follows.

(1) Rate Structure Conversion. Beginning in January 1998 Lessee will convert the City's inverted rate structure to Lessee's rates by taking the revenue generated by the rates excluding charges and other revenue and computing an equivalent rate that would generate the same amount of revenue.

(2) Phase-in Period. Beginning in January 1998 Lessee will have new rates and charges established by computing the differences between revenue generated using

current Lessee rate and that of the new rate structure computed above and dividing said difference by three years yielding a rate increase allowed annually for the next three years starting on January 1998 and concluding on January 2000 thereby completing the transition period. The charges will be changed in the same manner by taking the difference between the City's rates as established on September 1992 and the Lessee's charges for the same period and dividing by 3 years to yield the annual increase which will begin on January 1998 and end on January 2000, thereby completing the transition period.

B. No charge will be made for water delivered to Cupertino fire department facilities. No charge will be made for fire fighting activities. All other municipal properties using water service will be charged regular rates.

C. In the event of mandatory water rationing imposed by the Lessee, the Santa Clara Valley Water District or any other authorized public utility and other authorized public authority and to the extent allowed by law, Lessee may impose water conservation, mandatory water rationing and rationing penalties on those City customers exceeding rationing allocations.

#### Section 9. Evaluation of System/Arbitration

Lessee, upon written request of City or City's agent, shall permit City or City's agent to conduct a comprehensive inspection of the Water System, including, but not limited to, field inspections, maintenance records and reports, customer complaints, capital improvement installations, schedules, and plans, in order to assess the condition of the Water System.

In the event that City determines that all or part of the Water System is not being operated or maintained in accordance with customary utility standards, City shall provide written notice to Lessee describing the deficiencies which City wishes to be corrected. Lessee, shall within sixty (60) days thereafter, file with City its written response describing which deficiencies Lessee agrees are valid together with a plan to correct said deficiencies. Failure of Lessee to provide said written response within said period shall be deemed by City as an admission that said deficiencies exist and City may through an action for specific performance or other legal action compel Lessee to perform the work necessary to correct said deficiencies.

In the event that Lessee, in its written response to City disagrees with any or all of the deficiencies described in City's notice or in the event that City does not agree to the plan for deficiency corrections, then, in that event, the parties shall meet in good faith, in an attempt to resolve all issues.

In the further event that agreement cannot be reached between the parties or any or all issues, then the parties agree to submit the unsolved issues to arbitration under the

rules of the American Arbitration Association or such other association as selected by the Presiding Judge of the Santa Clara County Superior Court, State of California.

Section 10 Water Supply.

Lessee will perform and honor all water supply contracts executed by City and presented to Lessee prior to the Closing Date. Any bills or invoices received by the City pursuant to such contracts for water delivered after the closing Date shall be promptly forwarded to Lessee for payment. Lessee has no right to terminate any such contract or to renew any such contract for more than 12 months without the express written permission of the City. If assignment or transfer of any water right or contract is deemed necessary by either Lessee or City, City will cooperate with Lessee in completing such assignment or transfer for the duration of the Lease.

Lessee shall not modify or take water supply wells out of permanent service without the express written permission of the City's Director of Public Works.

Section 11. Customer Billing and Collections.

A. Lessee shall bill and collect from customers receiving water through the Water System on the basis of the rates approved by City pursuant to Section 8, as adjusted for any pass-through adjustments permitted or required by the provisions of Section 8, and shall own, keep and retain all proceeds from such collections as the sole property of Lessee. Lessee shall propose payment and credit rules substantially similar to those imposed by Lessee in similar adjacent localities, and more particularly to customers served by Lessee in other parts of the City, with such modifications as City approves, and City shall approve such rates if they are reasonable and comply with all provisions of law applicable to municipality owned water systems. Any amendments thereto shall be submitted to City for approval.

Lessee reserves the right to bill each customer on a monthly or bi-monthly basis, in the discretion of Lessee.

B. To the extent required by law, Lessee shall bill and collect on behalf of City from customers receiving water through the Water System any additional amounts which City may assess as a utility user's tax on such customers and shall promptly pay all such amounts to City.

C. City agrees to cooperate with Lessee in collection of unpaid/delinquent accounts. In doing so, City shall not be obligated to pursue collection on behalf of the Lessee of any such amounts unpaid by customers.

D. Transition Periods: the meters of all customers in the Service Area shall be read (jointly unless City and Lessee agree otherwise) in accordance with the schedules set by both the City and Lessee. All monies received by either City or Lessee pertaining to



water service furnished prior to the final billing shall be and remain the property of City. All monies received by either City or Lessee pertaining to water service furnished during the Term shall be and remain the property of Lessee and, to the extent received by City, shall be accounted for and paid over to Lessee with reasonable diligence; provided, however, upon expiration of the Term or termination of this Lease, the amounts then due and the amounts due through such date by all customers shall be calculated and, in lieu of collection and retention by Lessee, Lessee shall be promptly paid such amount by City minus a reasonable amount for bad debts based on the collection history of the customers in the Service Area.

Section 12. Insurance.

A. Obligations of Lessee. During the term of this Lease, Lessee at its own cost and expense shall maintain insurance, issued by a carrier or carriers acceptable to City, as follows:

(1) Commercial general liability insurance in the single limit amount of not less than \$5,000,000, written on an occurrence basis. Such insurance shall include coverage for injury (including death) or damage to persons and/or property arising out of the operations of Lessee pursuant to this Lease. The policy shall include coverage for liability assumed under this Lease for personal injury, property damage and all other insurable claims as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease.

(2) Workers' compensation insurance, or a certificate of self-insurance, insuring against liability under the Workers' Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such insurance shall fully cover all persons employed by Lessee in connection with its operations under this Lease for claims of death or bodily injury arising in connection with their employment by Lessee pursuant to its operations under this Lease.

(3) Automobile (vehicle) liability insurance on an occurrence basis for bodily injury and/or property damage in a single limit amount of not less than one million dollars (\$1,000,000).

B. All policies of insurance shall contain an endorsement in favor of City and its officers, agents and employees listing them as additional insureds.

C. The parties shall periodically review the insurance required hereby for the purpose of agreeing on increases in the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

D. All insurance shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California and reasonably acceptable to City.

E. All policies of insurance issued by the respective insurers shall provide that such policies shall not be canceled or materially changed without at least thirty (30) days' prior written notice to Lessee and to City. Copies of such policies shall be deposited with City, together with appropriate evidence of payment of the premiums therefor, prior to the Closing Date. Copies of all renewed or new policies, together with evidence of payment, shall likewise be deposited with City prior to expiration dates of expiring or non-renewed policies.

F. The limits of insurance required by this Lease or as carried by Lessee shall not limit the liability of Lessee nor relieve Lessee of any obligation hereunder.

G. Lessee shall cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against City in connection with any damage covered by any policy.

Section 13. Liens and encumbrances.

City agrees to keep the Water System and Groundwater free and clear of all liens, security interests and encumbrances except for those consented to by Lessee. Lessee agrees to keep the Water System and Groundwater free and clear of all liens, security interests and encumbrances, except for those consented to by the City.

Section 14. Surrender Upon Expiration or Termination.

Upon expiration or termination of this Lease, Lessee agrees that it shall surrender to City the Water System in good order and condition and in a state of repair that is consistent with prudent use and maintenance in accordance with customary utility standards.

Section 15. Default and Remedies.

A. The occurrence of any of the following shall constitute a default by Lessee:

(1) If Lessee fails to make any payment to City or to any third party required by this Lease as and when due, or to obtain and maintain any insurance required by this Lease, where such failure continues for ten days following receipt of written notice from City specifying the failure;

(2) If Lessee fails to perform any of its other covenants or agreements herein contained, where such failure continues for thirty days following receipt of written notice from City specifying the failure;

(3) Notwithstanding subsection (2) above, if a failure to perform cannot feasibly be cured within thirty days, for example, a major repair, if then Lessee fails to commence and diligently proceed toward full performance of the cure within thirty days following receipt of written notice from City specifying the failure, or if Lessee fails to complete such performance within a reasonable time; or

(4) (a) If Lessee is or becomes bankrupt or insolvent or makes any general arrangement or assignment for the benefit of creditors; (b) if Lessee becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 90 days); (c) if a trustee or receiver is appointed to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease and possession is not restored to Lessee within 60 days; or (d) if a writ of attachment or execution is levied on, or there is a judicial seizure of, substantially all of Lessee's assets or of Lessee's interest in this Lease and such seizure is not discharged within 60 days.

B. If City shall default in the performance of any of its covenants or agreements contained herein and such default shall continue for a period of thirty days after receipt by City from Lessee of written notice specifying the nature of the default, then Lessee may at its option, upon 30 days written notice, cancel and terminate this Lease. In the case of a default which cannot feasibly be cured within 30 days, if City fails to commence performance and diligently proceed toward full performance within 30 days after receipt of notice by Lessee of City's failure to perform or fails to complete performance within a reasonable time thereafter, Lessee may, upon 15 days notice, terminate this Lease.

C. In any action brought by the City in a court of competent jurisdiction to enforce the provisions of this Lease or for monetary damages for its breach, the City, if successful, shall recover, in addition to any monetary damages, its litigation costs, including reasonable attorney's fees.

D. City shall have the following remedies if Lessee commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law or provided for elsewhere in this agreement.

(1) Lessee's Right to Possession Not Terminated. In the event of a default by Lessee, during the continuance of the default and for so long thereafter as any damages or other sums payable by Lessee in connection with such default remain unpaid, City can continue this Lease in full force and effect, and the Lease will continue in effect as long as City does not terminate Lessee's right to possession, and City shall have the right to collect the rent when due. In the event that Lessee ceases to operate the Water System, City can enter the Water System and relet the Water System and the Groundwater, or any part of it, to third parties for Lessee's account. Lessee shall be liable immediately to City for all costs City incurs in reletting the Water System and the Groundwater. Reletting can be for a period shorter or longer than the remaining Term of

this Lease. Lessee shall pay to City the rent due under this Lease on the dates the rent is due, less the rent City receives from any reletting. No act by City allowed by this section shall terminate this Lease unless City notifies Lessee that City elects to terminate this Lease.

(2) Termination of Lessee's Right to Possession. In the event of a default by Lessee, during the continuance of the default and for so long thereafter as any damages or other sums payable by Lessee in connection with such default remain unpaid, City can terminate Lessee's right to possession of the Water System and the Groundwater at any time. No act by City other than giving formal written notice to Lessee shall terminate this Lease. Acts of maintenance, efforts to relet the Water System and the Groundwater or the appointment of a receiver on City's initiative to protect City's interest under this Lease (other than the appointment of a receiver to perform all of Lessee's obligations hereunder) shall not constitute a termination of Lessee's right to possession. On termination, City has the right to recover from Lessee any amount necessary to compensate City for all detriment proximately caused by Lessee's default.

(3) City's Right to Cure Lessee's Default. City, at any time after Lessee commits a default, can cure the default at Lessee's cost. If City, at any time, by reason of Lessee's default, pays any sum or does any act that requires the payment of any sum, the sum paid by City shall be due immediately from Lessee to City at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by City until City is reimbursed by Lessee. The sum, together with interest on it, shall be additional rent.

E. Notwithstanding any provision of this Section 16 to the contrary, if a default or failure to perform by Lessee poses a threat to public health or safety, City shall so notify Lessee, and if Lessee fails to take corrective action within the time specified in such notice, City may enter the Water System and take all necessary action at Lessee's expense. Lessee shall promptly reimburse City for its costs.

#### Section 16. Assignment.

Lessee agrees not to assign this Lease or sublet the Water System or any portion thereof without the consent of City, which consent shall not be unreasonably withheld; provided, however, that City's consent shall not be required in connection with any assignment by Lessee of all of its rights and obligations hereunder to an affiliated company which is controlled by, controls, or under common control with Lessee.

#### Section 17. Discharge of Liens.

Lessee agrees to pay and discharge all claims for materials, parts, labor, water, power and other consumables and supplies furnished at Lessee's instance or request upon or to the Water System and to keep the Water System free and clear of all liens resulting from such claims. City agrees to pay and discharge all claims and obligations for

materials, parts, labor, water, power and other consumables and supplies furnished at City's instance or request upon or to the Water System prior to the commencement of the Term of this Agreement.

Section 18. Indemnity.

Lessee agrees to hold City, and its officers, agents and employees, free and harmless of and from, and to defend, indemnify, and protect City, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, reasonable attorneys' fees and all costs and fees of litigation and its threat) of any kind or nature arising out of or in any way connected with the Lease or Lessee's performance or obligations under this Lease to the maximum extent permitted by Law. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Lessee's occupancy of the Water System. Without in any way limiting the foregoing, Lessee shall be solely responsible for, and agrees to defend and indemnify City and hold City harmless for any third party claim or action challenging the validity of this Lease. In the event this Lease is declared invalid, Lessee waives any claim it may have against City in connection therewith.

City agrees to hold Lessee, and its officers, agents and employees, free and harmless of and from, and to defend and indemnify Lessee, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, all costs and fees of litigation and its threat) of any kind or nature arising from claims by third parties or governmental agencies and resulting from negligence, gross negligence, recklessness or willful misconduct by City in connection with City's ownership or operation of the Water System occurring or accruing prior to the Closing Date.

Section 19. California Law.

This Lease shall be governed by the laws of the State of California.

Section 20. Notices.

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party; if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City: City of Cupertino, City Clerk  
10300 Torre Avenue  
Cupertino, California 95014

Lessee: San Jose Water Company  
374 West Santa Clara Street  
San Jose CA 95196

or at such other address as either party shall later designate for such purpose by written notice to the other party. Mailed notice shall be deemed given on the date of delivery shown on the receipt card.

Section 21. Waiver.

The waiver by City of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof. The waiver by Lessee of any breach by City of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 22. Representation.

City hereby represents and warrants to Lessee that the City owns the Water System free and clear of any and all liens, security interests and encumbrances.

Section 23. Nondiscrimination.

Lessee covenants by and for itself, its officers and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of sex, race, color, creed, national origin, ancestry, religion, citizenship status, age, marital status, medical condition, mental or physical disability, sexual orientation, veteran status or any other characteristic protected by federal or state law or local ordinance in the leasing, transferring, use, or enjoyment of the Water System nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation.

Section 24. Counterparts.

This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Lease.

Section 25. Merger and Modification

This Lease and bid documents related thereto set forth the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other oral or written provisions. This Lease may be modified or terminated only in a writing signed by all parties.

Section 26. Taxes and Assessments; Possessory Interest.

Lessee shall pay all taxes, assessments, fees, levies, charges, license or permit fees and other governmental charges of any kind or nature which are or may be at any time or from time to time during the Term of this Lease levied, charged, assessed or imposed upon or against the Water System or the Groundwater or the leasehold estate created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to the Lease. Without limiting the generality of the foregoing, Lessee acknowledges that this Lease may create a possessory interest which may be subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest. Any such tax shall be the sole responsibility of Lessee.

Section 27. In-Lieu Franchise Fees

In addition to all other considerations described in this Lease, Lessee shall pay City during the term of this Lease, an in-lieu franchise fee equal to the franchise fee charged to Lessee by the City for its other water system existing within the City (and which is not part of this Lease) as prescribed by Title 6 of the City's ordinance code.

Section 28. Attorneys' Fees.

If any party to this Lease commences legal proceedings or arbitration to interpret this Lease, to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorneys' fees.

Section 29. Net Lease.

This Lease shall be deemed and construed to be a "net lease" and Lessee hereby agrees that the rental provided for herein shall be an absolute net return to City free and clear of any expenses, charges or setoffs.

Section 30. Compliance with Law.

Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole cost and expense, diligently and in a timely manner, comply in all material respects with all "Applicable Law," which term is used in this Lease to include all laws, rules, regulations, ordinance, directives, covenants, easements and restrictions of record, permits, and requirements of any applicable fire insurance underwriter or rating bureau, relating in any

manner to the Water System or the Groundwater (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Water System or the Groundwater, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance or storage tank, now in effect or which may hereafter come into effect, and whether or not reflecting a change in policy from any previously existing policy. Lessee shall notify City in writing (with copies of any documents involved) of any threatened or actual claim, notice, inquiry, citation, warning, complaint or report pertaining to or involving failure by Lessee, the Water System or the Groundwater to comply with any Applicable Law.

Section 31. Hazardous Substances.

A. Lessee will not cause or permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of Hazardous Substance (define below) on, in, under, or from the Water System or the Groundwater or any portion of it in violation of Applicable Laws. If Lessee does cause or permit any release or disposal of any Hazardous Substance on, in, or under the Water System or any portion of it, Lessee, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the Hazardous Substance to the complete satisfaction of City and other appropriate governmental authorities. Lessee shall promptly notify City of any release or disposal (of which Lessee has knowledge or becomes aware) of any Hazardous Substance on, in, under or from the Water System or the Groundwater.

B. Lessee agrees to indemnify, defend (with counsel reasonably acceptable to City) and hold City and City's officers, agents and employees free and harmless from and against, all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claims, or proceeding) that may at any time be imposed upon, incurred by, asserted, or awarded against City in connection with or arising from or out of:

(1) any Hazardous Substance, on, in, under, or affecting all or any portion of the Water System or the Groundwater, excluding any Hazardous Substance released, generated or disposed by City;

(2) any breach of any covenant or agreement of Lessee contained or referred to in this section;

(3) any violation or claim of violation by Lessee of any Applicable Law;  
or

(4) the imposition of any lien for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release



of Hazardous Substance, excluding any Hazardous Substance released, generated or disposed by City.

The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term hereof or by reason of Lessee's occupancy of the Water System and the Groundwater.

C. For purposes of this Lease, "Hazardous Substance" means any substance, material or waste which is defined as "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste" or similar term under any provision of any federal, state or local law and includes, without limitation, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof.

#### Section 32. City's Access.

City and City's agents shall have the right to enter the Water System at any time in the case of an emergency, and otherwise at reasonable times and on reasonable prior notice for the following purposes (i) to determine whether the Water System is in good condition as required by this Lease and whether Lessee is complying with its obligations under this Lease, (ii) to serve, post or keep posted any notices required or allowed by law or under this Lease, and (iii) as City may otherwise reasonably deem necessary.

#### Section 33. Execution

This Lease is effective upon full execution. It is the product of negotiation and therefore shall not be construed against any party.

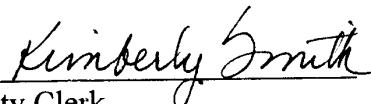
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF CUPERTINO

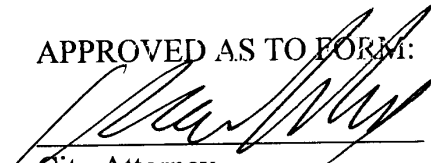
By:   
Mayor

CITY OF CUPERTINO

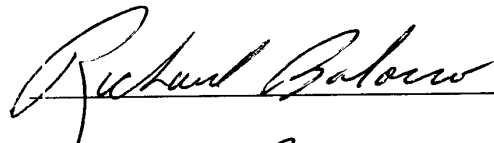
ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

LESSEE: SAN JOSE WATER COMPANY

  
VICE-PRESIDENT

## EXHIBIT A

This document certifies that a true and complete map detailing the boundaries of the service areas for Cupertino Water, California Water, and San Jose Water (Revised June 1991 and September 1997) and listed as Exhibit A in this *Agreement For Lease of Real Property* is on file in the Office of the City Clerk.

Date November 18, 1997

Carol Shepherd  
Deputy City Clerk

## EXHIBIT B

This document certifies that a true and complete map detailing the water system named *Water System* (Dated March 1990 and Revised 1996) and listed as Exhibit B in this *Agreement For Lease of Real Property* is on file in the Office of the City Clerk.

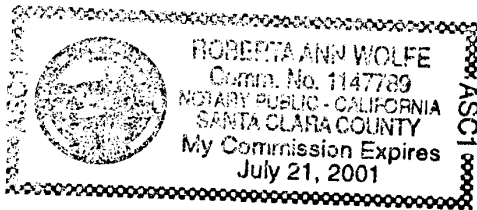
Date November 18, 1997

Carol Shepherd  
Deputy City Clerk

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California  
County of Santa Clara

On December 18, 1997, before, me, Roberta Ann Wolfe, Notary Public, personally appeared Kimberly Smith, personally known to me, to be the persons whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Roberta Ann Wolfe  
Signature of Notary

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER

City Clerk

- ☐ PARTNERS ☐ LIMITED  
☐ GENERAL

- ☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

Agreement  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
ATTORNEY-IN-FACT

18  
NUMBER OF PAGES

October 1, 1997  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**  
NAME OF PERSON OR ENTITY:  
City of Cupertino

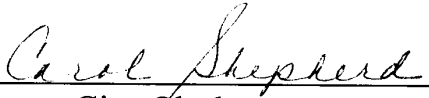
Mayor, City Attorney, Lessee: San Jose Water Co.  
SIGNER(S) OTHER THAN NAMED ABOVE

## VERIFICATION

I have reviewed this Agreement for Lease of Real Property (Water System) and to the best of my knowledge, the information contained herein is true and complete.

I verify under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on the 18<sup>th</sup> day of November, 1997, at Cupertino, California.

A handwritten signature in cursive script, reading "Carol Shepherd", is written over a horizontal line.

Deputy City Clerk  
City of Cupertino