



June 2, 2016

TO: LOCSO Board of Directors
FROM: Peter Kampa, Interim General Manager
Margaret Falkner, Utility Compliance Technician III

SUBJECT: Agenda Item 11H – 6/2/2016 Board Meeting
Adopt Resolution Approving an Interconnection Agreement with Golden State Water Company in Accordance with Program A of the Los Osos Basin Management Plan

President
Marshall E. Ochylski

Vice President
Jon-Erik G. Storm

Directors
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Louis G. Tomatzky
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Interim General Manager
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DESCRIPTION

The LOCSO and Golden State Water Company (GSWC) water distribution systems border each other. The two water purveyors currently share one inter-tie at the intersection of Los Olivos and 11th Street. The inter-tie is only used for emergency purposes. Improvement of this interconnection has been part of the District's Capital Improvement Project (CIP) and in the District's Water Master Plan since 2002.

At the September 18, 2008 Board of Directors meeting, authorization was given to then General Manager John Schempf to execute a letter of agreement with GSWC to pay 50/50 for engineering design by the Wallace Group to upgrade the intertie. At that time, it was anticipated the construction of this project would not occur until summer of 2009. This CIP project was budgeted for FY 2008/2009 and FY 2009/2010 but was never implemented. It has not been budgeted since 2009.

In April 2016, GSWC provided a draft agreement to the District Engineer for the operations and construction of this project once again. This project is included in the Los Osos Basin Management Plan as part of the Priority 1 CIPs in Program A. The item before the Board of Directors tonight is a resolution approving the agreement with GSWC.

STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board adopt Resolution 2016-20 approving an Interconnection Agreement with Golden State Water Company in accordance with Program A of the Los Osos Basin Management Plan.

Attachments

RESOLUTION NO. 2016-20

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
APPROVING AN INTERCONNECTION AGREEMENT WITH
GOLDEN STATE WATER COMPANY**

WHEREAS, the Los Osos Community Services District (herein "District") is a Local Governmental Agency formed and authorized to provide services within its jurisdiction, pursuant to Section §61000 et seq. of the California Government Code; and

WHEREAS, one of the powers of the District is to provide water for beneficial use for residents within District boundaries (Govt. Code §61100(a)); and

WHEREAS, the District has determined that due to overuse of groundwater in the region, the associated decline in water quality and the recent discovery of chemical contamination in one of its existing wells, that the District's current water supply is inadequate to meet the normal and customary water supply needs of its customers; and

WHEREAS, the Los Osos Groundwater Basin Management Plan (Plan) requires the construction and operation of an interconnection between the District and Golden State Water distribution systems; and

WHEREAS, the District Board of Directors in 2008 approved and directed the planning and installation of an interconnection between the two systems and annual budgets since that date have contemplated the interconnection; and

WHEREAS, the parties to the interconnection have developed an agreement describing the mutually agreeable terms and conditions under which such interconnection is to be constructed and operated, and said agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, DECLARED, DETERMINED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT AS FOLLOWS:

1. That the above recitals are true and correct; and
2. Approve the Agreement for Construction and Operation of Water System Interconnection between the District and Golden State Water Company; and
3. Authorize the District Interim General Manager to sign the Agreement.

On the motion of Director _____, seconded by Director _____,
and on the following roll call vote, to wit:

Ayes: _____
Nays: _____
Absent: _____
Conflicts: _____

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 2nd day of June 2016.

Marshall E. Ochylski
President, Board of Directors
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

Peter J. Kampa
Interim General Manager and Secretary to the Board

Michael W. Seitz
District Legal Counsel

**AGREEMENT FOR CONSTRUCTION AND OPERATION
OF WATER SYSTEM INTERCONNECTION**

This Agreement for Construction and Operation of Water System Interconnection (“Agreement”) is made and entered into as of _____, 2016 (“Effective Date”) by and between the Los Osos Community Services District, a California community services district (“LOCSD”), and Golden State Water Company, a California corporation (“GSWC”) (each a “Party” and collectively “the Parties”).

RECITALS

- A. LOCSD is a community services district formed pursuant to California Government Code sections 61000 *et seq.* and owns and operates a potable water distribution system in the unincorporated community of Los Osos in San Luis Obispo County, California.
- B. GSWC is an investor-owned public utility within the meaning of California Public Utilities Code sections 216 and 2701 and owns and operates a potable water distribution system within an area in the Los Osos community, for which it possesses a certificate of public convenience and necessity from the California Public Utilities Commission (“CPUC”).
- C. LOCSD and GSWC have determined that it is in the best interest of the Parties to construct a new metered interconnection (the “Interconnection”) to replace the existing interconnection between their respective potable water distribution systems for the exchange of water. The updated Interconnection was designed in a set of engineering plans (“Plans”) prepared by the Wallace Group dated June 5, 2015 and shown on Plates C-1 through C-4. The Interconnection is currently in the process of being replaced by the Parties pursuant to this Agreement. When completed, the Interconnection will consist of a subterranean vault, piping, valves, water meters and appurtenances located inside and outside the vault.
- D. The Parties desire that LOCSD coordinate and manage construction of the Interconnection, subject to approval by GSWC, and that the Parties share equally all third party costs associated with construction of the Interconnection.
- E. LOCSD and GSWC desire for this Agreement to govern operation of the Interconnection between their respective potable water distribution systems and the exchange of water as specifically defined and described in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained in this Agreement, the Parties hereby agree as follows:

1. INTERCONNECTION.

- (a) **Facilities Description.** The Interconnection shall generally consist of a subterranean vault, piping, valves, water meters and appurtenances located inside and outside the vault. The Interconnection shall be located at the intersection of 11th Street and Los Olivos Avenue in Los Osos. The Interconnection shall include two valves, one owned and controlled by each Party. Each Party shall own that portion of an Interconnection on its respective side of the water meters, including the valve that controls the flow of water and the meter that measures the flow of water from its system to the system of the other Party. The Interconnection will allow the Parties to provide for transfer of potable water supplies from one Party to the other, when agreed to by the Parties from time to time.
- (b) **Costs.** The Parties agree to equally share all third-party charges and expenses incurred with respect to the design and construction of the Interconnection. Each Party agrees to be responsible for its own internal costs and out-of-pocket expenses incurred with respect to the Interconnection.
- (c) **Measurement of Transferred Water.** The transfer of water shall be measured by, and the Interconnection shall be maintained to include, meters capable of measuring flow in either direction.
- (d) **Access.** Both Parties shall have access to the Interconnection, including the meters, at all times. However, neither Party shall operate the Interconnection to either supply or receive water without the express prior consent of the other Party, and then only in the presence of an authorized representative from the other Party, unless a Party expressly states in writing (including through electronic means) that the presence of its representative is not required.
- (e) **Maintenance.** The Parties agree to coordinate any and all required maintenance, repair, replacement and improvements to the Interconnection and shall bear all costs associated with such maintenance, repair and improvements equally. Shared maintenance responsibilities include all facilities designated as "shared maintenance facilities" in the schematic marked as Exhibit "A" and attached to this Agreement. Such maintenance shall include calibration of all meters at least once every five years.

2. **CONSTRUCTION.** LOCSO shall assume the lead role in arranging for the construction of the Interconnection, subject to the following:

- (a) **Scope of Work.** Prior to the commencement of any work on the Interconnection, the Parties shall have mutually agreed on the scope, description and total costs of each Interconnection (the "Approved Scope of Services"). The total cost of the Interconnection may not exceed the Approved Scope of Services without the approval of both Parties. LOCSO shall provide GSWC prompt notice and supporting information indicating any likely increase in the total cost over the Approved Scope of Services.
- (b) **Contractor.**

- (1) **Contractor's Agreement.** LOCSD will use the Plans to request bids from contractors for construction of the Interconnection. LOCSD shall select the contractor for the Interconnection (the "Contractor") based on the lowest responsive bid from a properly qualified bidder. LOCSD will negotiate and enter into a contract with the Contractor, subject to review and approval by both LOCSD and GSWC.
- (2) **Payment of Contractor's Fee.** LOCSD will timely pay the fees and expenses of the Contractor in accordance with the terms of the Contractor's construction agreement. Within 30 days after submittal by LOCSD to GSWC of an invoice documenting the charges invoiced by the Contractor, GSWC will reimburse LOCSD for GSWC's 50 percent share of such charges.
- (c) **Permit Fees.** LOCSD will timely pay all permit and other fees required for the Interconnection. Within 30 days after the submittal by LOCSD to GSWC of an invoice documenting any such fees, GSWC will reimburse LOCSD for GSWC's 50 percent share of such fees. Any other fees or charges incurred with respect to the Interconnection shall be subject to prior approval by both Parties.
- (d) **Regular Meetings.** During the course of construction of the Interconnection, the Parties shall meet and confer as often as necessary to discuss the status of construction of the Interconnection, and confirm that the construction is in accordance with the Plans and within the Approved Scope of Services.

3. OPERATIONS.

- (a) **Ownership.** Each Party shall own that portion of the Interconnection on its respective side of the water meters, including the valve that controls the flow of water and the meter that measures the flow of water from its system to the system of the other Party.
- (b) **Transfer Process.** If a Party desires to receive water from the Interconnection, it shall contact the other Party and request the transfer of water for a defined period of time. The Party of whom the request is made shall evaluate the request to determine if it can transfer water while meeting all service obligations to its public utility customers. The supplying Party shall have sole authority for determining availability of water to be provided to the other Party. If the supplying Party agrees to transfer water to the requesting Party, each Party shall send a representative to the Interconnection to open the valves. The supplying Party may suspend or terminate the transfer of water at any time at its discretion and provide as much notification as possible to requesting party. Each Party shall maintain a point of contact for all water transfer requests, beginning with the following representatives:

To LOCSD: General Manager
Los Osos Community Services District

2122 9th Street
Los Osos, CA 93402
(805) 528-9370

To GSWC: Operations Superintendent, Los Osos CSA
Golden State Water Company
1140 Los Olivos Avenue
Los Osos, CA 93402
(800) 999-4033

- (c) **Water Charges.** During each calendar year, the Parties shall maintain an accounting of the amount of water transferred between the Parties through the Interconnection. To the extent possible, the Parties shall attempt to balance the water transferred from each Party to the other, so that the amount of water transferred by each Party to the other at the end of the year is equal. If at the end of each year, the amounts of transferred water are not balanced, the net supplying Party shall bill the receiving Party for the net water transferred during the year, at the first tier water rate then in effect for the supplying Party.
- (d) **Consistency with Basin Plan.** The Parties acknowledge and agree that they will make every reasonable effort to use the Interconnection in a manner consistent with the judgment and physical solution entered in the matter of *Los Osos Community Services District v. Golden State Water Company, et al.* (San Luis Obispo County Superior Court Case No. CV 040126).

4. TERM.

- (a) **Effective Date.** This Agreement shall be effective on the first date both Parties have executed this Agreement ("Effective Date"), and thereafter shall remain in effect until either Party terminates the Agreement as described in Section 4(b).
- (b) **Termination.** Either Party may terminate this agreement at any time with 180 days' notice by delivering written (including by electronic means) notice of termination to the other Party. The Parties shall cooperate in good faith to develop written plans for disconnecting the Interconnection. Such plans will not damage any Party's physical facilities or cause a material water loss to any Party, and shall be subject to approval by both Parties prior to disconnection, which approval shall not be unreasonably withheld.

5. ADDITIONAL OPERATING TERMS

- (a) **Good Faith.** Wherever in this Agreement a Party has the right to approve an act of another Party, the former shall exercise such discretion in good faith and according to reasonable commercial standards. Similarly, where a Party is required to satisfy a condition or complete an act in a certain fashion or within a specified time period, that Party shall pursue such objectives in good faith and make reasonable efforts to accomplish the same; the other Party shall likewise in good faith cooperate and

assist the first Party in accomplishing this task to cause the consummation of the Agreement as intended by the Parties and evidenced by this Agreement.

- (b) ***Hold Harmless.*** It is fully understood that neither Party shall be obligated to deliver water, or to continue the delivery of water, at any time, including, without limitation, situations involving immediate danger to life or property. The Party requesting the transfer of water agrees to defend, indemnify and hold harmless the other Party from any and all claims or actions arising from or connected with the other Party's refusal or failure to supply water upon request.
- (c) ***Dispute Resolution.*** If any conflict should arise between the Parties to this Agreement about or concerning the terms of the Agreement or operations of the Interconnection, the Parties mutually agree to meet and confer in a good faith effort to resolve the conflict prior to pursuing legal or equitable remedies.
- (d) ***Other Instruments.*** Each Party shall cause to be executed any further documents reasonably necessary in the opinion of the requesting Party. The requesting Party shall pay the cost of the further documents (except each Party shall pay its own attorney fees).

6. GENERAL PROVISIONS.

- (a) ***Interpretation.*** The terms of this Agreement have been negotiated by the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction shall be applied against any Party to this Agreement.
- (b) ***Recitals.*** The recitals set forth at the beginning of this Agreement of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions set forth in the recitals, if any, shall be deemed a part of the Agreement.
- (c) ***Captions, Headings and Abbreviations.*** The captions and headings have no force or effect in the interpretation of this Agreement. Words in parentheses and quotation marks signify an abbreviation for the previous set of words. Abbreviations have the same meaning as a full restatement of the signified words.
- (d) ***Severability.*** If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the Agreement shall be modified or changed by the Parties to the extent possible to carry out the intentions and directives stated in this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby.

- (e) **Notices.** All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement, to be effective shall be in writing and shall be delivered in person, by U.S. mail (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the Party to whom the notice is directed at the address of such Party as follows:

To LOCSD: Los Osos Community Services District
P.O. Box 6064
2122 9th Street
Los Osos, CA 93402
Attn: General Manager

To GSWC: Golden State Water Company
630 East Foothill Boulevard
San Dimas, CA 91773
Attn: General Manager, Coastal District

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either Party may change its address by giving the other Party notice of its new address as provided above.

- (f) **Assignment.** No Party may assign, transfer or encumber all or any part of its rights, duties or other interests in this Agreement.
- (g) **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective legal representatives, successors and assigns.
- (h) **No Third Party Rights.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to this Agreement and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.
- (i) **Default.** The failure by either Party to perform its obligations under this Agreement, which continues for more than thirty (30) days after receipt of notice from the other Party stating the existence and nature of such default (unless the default cannot be cured in said thirty (30) days, and in that event, if the defaulting Party fails to continuously and diligently remedy the default) shall constitute a default, which default shall entitle the other Party to terminate this Agreement at its option by notification to the defaulting Party. Said termination option shall be in

addition to, not in lieu of, other rights and remedies of the non-defaulting Party under this Agreement and by law.

- (j) **Waiver.** No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a Party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a Party shall be null and void if the Party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the Party making the waiver.
- (k) **Attorney Fees.** If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
- (l) **Entire Agreement and Amendment.** This Agreement is the entire understanding of the Parties. There are no other promises, representations, agreements or warranties by any of the Parties. This Agreement may only be amended by a writing signed by all affected Parties. Each Party waives their right to assert that this Agreement was affected by oral agreement, course of conduct, waiver or estoppel.
- (m) **Counterparts and Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed counterparts shall be sufficient proof of this Agreement. The Parties agree that receipt of what reasonably appears to be the facsimile or electronic copy of a signature by another Party shall be deemed equivalent as receipt of an original signature. No subsequent delay or failure of any Party to deliver to the other Party such Party's original signature page shall diminish the effectiveness of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed theretofore duly authorized as of the dates below their signatures.

**LOS OSOS COMMUNITY SERVICES
DISTRICT**

GOLDEN STATE WATER COMPANY

By: _____

General Manager

Dated: _____, 2016

By: _____

Patrick Scanlon
Vice President, Operations

Dated: _____, 2016

By: _____

Eva Tang
Senior Vice President, Chief Financial
Officer

Dated: _____, 2016

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