

COST SHARING AGREEMENT

This Cost Sharing Agreement (“Agreement”) is made and entered into by and between the Town of Hillsborough (“Town”), City of Millbrae (“Millbrae”), and City of Burlingame (“Burlingame”). Town, Millbrae, and Burlingame are sometimes referred to herein individually as a “Party” or “Participant” or collectively as the “Parties” or “Participants.”

RECITALS

A. WHEREAS, the Participants are interested in developing an alternative point of connection (POC) to the San Francisco Public Utility Commission (SFPUC) Regional Water System (RWS) to improve the distribution of potable water (improve efficiency, conserve energy) and provide a reliable water supply following a natural disaster or other emergency conditions.

B. WHEREAS, the Participants have developed a proposed preferred project to achieve this objective, the Highline Water Pipeline Project (“proposed Project”), which would be a multi-agency alternative water supply project that would enhance regional water supply reliability in light of potential seismic and wildfire risk.

C. WHEREAS, the proposed Project would provide an alternative POC from the SFPUC by installing a new pipeline (the “Highline Pipeline”) from SFPUC’s Harry Tracy Water Treatment Plant (HTWTP) through the 30-inch Cross Connection Pipeline and Helen Turnout in Millbrae to the Town of Hillsborough.

D. WHEREAS, the proposed Project would consist of the construction of two components, as described herein, and is described as Alignment 3 in the *DRAFT Water Pipeline Design from Harry Tracy Water Treatment Plant to the Town of Hillsborough Alternatives Analysis Report*, dated September 2021, prepared by Freyer & Laureta, Inc.

E. WHEREAS, the current Project Participants include the Town, Millbrae, and Burlingame.

F. WHEREAS, the Town has engaged both SFPUC and Bay Area Water Supply and Conservation Agency (BAWSCA) to provide input in the planning stage.

G. WHEREAS, the potential benefits for each Participant include a new separate point of delivery into their respective distribution systems and wildfire protection along the Highway 280 corridor. The percentage of each Participant’s existing distribution system that may be served from the proposed Project may vary among the Participants depending on how and where the connections to the existing distribution systems would be made.

H. WHEREAS, the proposed Project is subject to environmental review under the California Environmental Quality Act (“CEQA”), which has not yet been completed, and the Parties agree and understand that the proposed Project cannot be considered for approval and implementation before CEQA compliance occurs. The Town is currently completing the CEQA compliance efforts and is planning to advance the Project’s Preliminary Design efforts within the next few months.

I. WHEREAS, the proposed Project is not anticipated to be operational until 2026, and the Town has been notified that the Federal Emergency Management Agency (FEMA) has selected the Project to receive up to 70% reimbursement of Project costs from the Building Resilient Infrastructure and Communities (BRIC) program that will allow the Town to fund the proposed Project, pending CEQA compliance. A copy of the Letter of Award will be provided to the Participants prior to issuing the Project for bid.

J. WHEREAS, the Participants desire to memorialize their understanding of the cost sharing arrangement so that the Town can prepare an adequate Project description for environmental documentation and preliminary design, and the Participants desire to establish the conditions, provisions, and requirements under which the Project's potable water supply would be made available to the Participants following the Town's certification of the Initial Study/Mitigated Negative Declaration and subsequent Project approval in compliance with CEQA.

AGREEMENT

THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual understandings contained in this Agreement, and other good, valuable, and sufficient consideration, the Parties hereto agree as follows:

1. **The Project.**

(a) Overview. The Project is envisioned to include two major components, as follows:

(i) Component 1. Component 1 would consist of a new transmission main with a capacity of 5.71 million gallons per day (MGD). The 5.71 MGD of capacity will be delivered and allocated among the Participants as follows:

- (1) Town: 2.91 MGD
- (2) Millbrae: 1.88 MGD
- (3) Burlingame: 0.92 MGD

Additionally, Component 1 would include an upgrade to the existing SFPUC Helen Turnout located in Millbrae adjacent to the Meadows Elementary School near the intersection of Helen Drive and Lynnwood Lane.

Furthermore, Component 1 would be capable of delivering 4,000 gallon per minute to meet fire suppression requirements. In the event of fire suppression needs, Component 1 priority will be to meet fire flow demands and all Participants would meet customer demands through storage and/or other SFPUC turnouts.

(ii) Component 2. Component 2 would consist of a new pump station to be constructed within Millbrae's former Helen Tank site property that would be a dual-purpose pump station serving the Project and as an emergency pump station for the sole benefit of Millbrae.

(b) Access and Utilization. The Participants' access to and utilization of the Highline Pipeline will be continuous, 24 hours per day, subject to any operational restrictions that may be imposed on the Project by SFPUC.

(c) Environmental Considerations.

(i) The Participants acknowledge that compliance with CEQA is necessary before consideration of approval, construction, and operation of the proposed Project.

(ii) The Town will be the lead agency overseeing environmental compliance for the Project and the performance of the environmental analysis under CEQA.

(iii) An Initial Study for the proposed Project has been prepared and the Town anticipates that a Mitigated Negative Declaration (MND) under CEQA will be issued in 2024 for the proposed Project.

(iv) By entering into this agreement, the Parties recognize and agree that the proposed Project description may change in response to environmental analysis under CEQA. Moreover, the Parties agree and recognize that this agreement does not bind the Parties to proceed with the proposed Project, and that the Parties have full discretion to consider and adopt a "no project" alternative or to deny any requested approvals of the proposed Project.

(d) Federal Contingency. It shall be a condition precedent to the Parties' obligations under this Agreement that Building Resilient Infrastructure and Communities Program grant reserve satisfactory to all Parties is received. If satisfactory grant funding is not received, the Parties may terminate this Agreement, or any Party may withdraw from this Agreement for convenience.

(e) Capital Improvements Necessary for Project.

(i) The following capital improvements will be needed to accommodate the Project, if the proposed Project is approved:

(1) Design and construction of Component 1: including a new pipeline, new fire hydrant infrastructure, connection to Millbrae's Skyline Tanks, Burlingame's Mills Tank, and the Town's Darrell Tanks.

(2) Design and construction of Component 2: including new pumps and associated electrical and control equipment including a control network that allows for remote monitoring and operation by the Town.

(ii) Component 2 will be a dual-use facility, including the following:

(1) Provide pumping capacity to convey water to all Participants with the facilities described in Component 1.

(2) Emergency pump station for the sole benefit of Millbrae to pump water from Millbrae's Zone IV to Zones 1 through Zones III using Millbrae's existing water distribution system components.

(iii) If the proposed Project is approved following CEQA compliance, Millbrae will provide the site for Component 2 at no cost to Burlingame and the Town.

(iv) The Town will contract for the environmental documentation, preliminary design, final design, construction, and construction management/oversight for Component 1 and Component 2.

(v) Millbrae and Burlingame will have an opportunity to review, comment and approve, in writing, as appropriate, the design as it relates to potential impacts or required modifications to their facilities. The Town will timely address all comments provided by Millbrae and Burlingame. If Millbrae or Burlingame fail to provide comments within thirty (30) days of receipt of design documents for review, the applicable Party will be deemed to have approved the design. No change shall be made to designs approved by a Party without that Party's prior written approval

(vi) Millbrae will provide design criteria for the emergency pump station portion of Component 2.

(vii) Following construction and commissioning of the proposed Project, the Town, with consultation and input from the Participants, will have the right to make any improvements to either Component 1 or Component 2 that are reasonably necessary to provide continued reliable water supply to all Participants. All improvements requested by the Participants that fall outside the services provided by Town, as defined in Section 3, will be funded solely by the requesting Participant. Prior to initiating an improvement project, the Town will consult with the Participants to determine which entity will take the lead in procuring services for environmental, planning, design, and construction.

(viii) The Town will be the lead entity contracting for the work and will provide an opportunity to the other Participants for review and input (or approval, as required in (v) above) at each key milestone in the Project's development and implementation (i.e., review of design work products at key interim milestones - 30%, 60%, 90%, and 100% completion; review of bids and apparent low bidder; participation in construction inspection; review and approval of contractor progress payment applications and final payment).

(ix) Prior to publication of the invitation to bid for Project construction, the Parties shall develop a process for review and comment and, as appropriate, approval of construction change orders.

2. **Project Costs.**

(a) **Cost Sharing.** The total Project costs to be based on actual bid amounts plus an agreed upon contingency will be shared by the Participants in proportion to their respective percentage capacity in the Project. Payment of Project costs shall be made, when due, based on such proportionate share.

(b) Grant Fund Sharing. Any grant funding received by the Town will be applied to the total Project costs in proportion to the Participants' respective percentage capacity in the Project.

(c) Current Estimated Project Cost. The current total project cost including each Participant's share is estimated to be:

Component 1					
	Total Estimated Project Cost	BRIC Grant Estimated Project Cost	Town Estimated Project Cost	Millbrae Estimated Project Cost	Burlingame Estimated Project Cost
Construction	\$ 20,240,000	\$14,168,000	\$ 4,038,000	\$ 1,159,200	\$ 874,800
Engineering/ Administration	\$ 5,461,000	\$ 3,822,700	\$ 1,089,300	\$ 313,000	\$ 236,000
Component 1 Subtotal	\$ 25,701,000	\$17,990,700	\$ 5,127,300	\$ 1,472,200	\$ 1,110,800
Component 2					
	Total Estimated Project Cost	BRIC Grant Estimated Project Cost	Town Estimated Project Cost	Millbrae Estimated Project Cost	Burlingame Estimated Project Cost
Construction	\$ 5,110,000	\$ 3,577,000	\$ 1,019,400	\$ 292,800	\$ 220,800
Engineering/ Administration	\$ 1,379,000	\$ 723,975	\$ 435,625	\$ 125,400	\$ 94,000
Component 2 Subtotal	\$ 6,489,000	\$ 4,300,950	\$ 1,078,750	\$ 418,200	\$ 314,800
Total Estimated Project Cost:	\$ 32,190,000	\$22,291,675	\$ 6,582,325	\$ 1,890,400	\$ 1,425,600

(d) Periodic Cost Estimate Updates. The Town will provide the Participants with periodic estimates for the Project costs from the Project Engineer upon thirty percent (30%), sixty percent (60%), and ninety percent (90%) design completion. Participants will have the opportunity to review the estimates and respond with comments and/or questions regarding the estimate.

(e) Not to Exceed Funding Amounts. Notwithstanding any other provision of this Agreement, Burlingame's contribution to the Project shall not exceed Two Million, One Hundred Fifty Thousand Dollars (\$2,150,000) without an amendment to this Agreement. The current estimated cost for engineering/administration identified in the table above shall not be exceeded without notification to and the written consent of the Participants.

(f) Participant Withdrawal. As noted above, Participants maintain the right to deny and not participate in the proposed Project pending environmental review under CEQA.

After CEQA compliance is completed, and if the proposed Project is approved. Participants will further have the opportunity to withdraw from their participation in the Project in the event that the Project Engineer's Construction Estimate exceeds the current estimate by 25% at the 30% design review, or if the bid amount received from the lowest responsible, responsive bidder exceeds the current estimate by 15% at the bid opening. In such case, the Parties shall meet and confer regarding the bid for construction prior to any Party withdrawing from the Agreement. At project award the design and bid documents will be approved by each agency. A Participant may also withdraw from this Agreement if the Parties are unable to satisfactorily agree upon the terms of the Operations and Maintenance Agreement.

(g) **Participant Payment.** Once Project bids are received and Participants have agreed to their proportionate total project costs including contingencies, Millbrae and Burlingame will be requested to provide the Town their proportionate share of the Project costs at Project Award. At Burlingame's and Millbrae's discretion, the estimated contribution may be either paid in full before the Project Award or on a billing schedule determined by each Participant. Any final true-up billings will be made by the Town within 120 days of Project completion.

(g) **Quarterly Reporting.** The Town will provide the Participants quarterly reporting of Project progress and costs incurred and chargeable to each Participant throughout design and construction. Such reporting shall include back-up documentation as may reasonably be requested by the Participants.

3. **Project Operation and Maintenance.**

(a) **Facility Use.** The proposed facilities will be used for potable and fire water supply systems, necessitating a high level of reliability as permitted and regulated under the State of California State Water Resources Control Board's Division of Drinking Water.

(b) **Project Operating Agreement.** The Participants understand that the final project operation parameters are not available at this time; therefore, the Participants will enter into a separate Project Operating Agreement upon finalizing those parameters at a later date.

For the purposes of providing guidance, a Draft Framework for the Project Operating Agreement is included herein as a reference as Exhibit B. The Participants will negotiate and finalize the terms of the Project Operating Agreement prior to the award of the Project construction contract. The respective City Council for each Participant shall approve the Project Operating Agreement.

4. **Access to Records.**

Each Party shall maintain records associated with its responsibilities under this Agreement in accordance with generally accepted accounting principles. Upon reasonable notice, each Party shall permit the authorized representatives of the other Parties access to its accounting books, records and documents related to this Agreement for the purposes of examining, auditing and inspecting the same. Such records shall be maintained for a period of four (4) years from the date of final payment under this Agreement. Each Party's right to audit books and records directly related to this Agreement shall also extend to all contractors performing work funded under this Agreement.

5. **General Provisions.**

(a) **Representations and Warranties.** The Parties and signatories each represent and warrant that the individuals signing below are duly authorized to bind their respective principals to the terms of this Agreement. The individuals signing below also represent and warrant that they have obtained all necessary approvals and have the authority to bind their respective principals to the terms of this Agreement. In the event that any of the representations and/or warranties herein are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting Party hereby agrees to defend, indemnify, and hold the other Party harmless from all damages, loss, liability, costs, and attorneys' fees resulting from said breach/misrepresentation.

(b) **Dispute Resolution.** The Parties shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. If a dispute is unable to be informally resolved or settled by the Parties, then thirty (30) days prior to filing any legal action, city managers of each Party shall meet together in person in good faith to endeavor to reach a mutually beneficial resolution and settlement of such dispute.

(c) **Force Majeure.** No Party shall be liable or responsible to the other Parties, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in performance under this Agreement (except for any obligations to make payments hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's reasonable control, including a force majeure event (which includes, but is not limited to, acts of God, natural disaster, act of war or terrorism, riot or other civil unrest, labor strike, governmental action). The impacted Party shall give prompt notice of a force majeure event to the other Parties.

(d) **Indemnification.** Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Parties, their officials, officers, employees, and agents from and against all claims, demands, losses, damage, liability, costs, and expenses of whatever nature including court costs and attorney fees ("Claims") arising out of any negligent act, omission or willful misconduct in the performance of this Agreement by the Indemnifying Party, its officials, officers, employees, contractors and agents. Notwithstanding the foregoing, no Party shall be obligated to indemnify another Party to the extent that any Claims are determined by a trier of fact to have been proximately caused by any negligent act, omission or willful misconduct of another Party.

(i) The Town shall add the other Parties as additional insureds and indemnified parties under the insurance and indemnification provisions of all contracts funded under this Agreement, with such provisions providing additional insured status and indemnity to the same extent provided to the Town.

(e) **Notice of Breach; Termination for Cause.** If a Party materially breaches this Agreement, a non-breaching Party may terminate this Agreement for cause, after providing the breaching Party a notice of such breach and a reasonable opportunity to cure of at least thirty (30) days, subject to extension as may be agreed upon by the Parties. A copy of such notice shall also be sent to the other non-breaching Party.

(f) Assignment. This Agreement may not be assigned by any Party, either in whole or in part, without prior written consent of the other Parties.

(g) Notice. Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to Town: Doug Davis, City Manager
1600 Floribunda Ave, Hillsborough CA 94010
DDavis@hillsborough.net

If to Burlingame: Lisa Goldman, City Manager
501 Primrose Ave, Burlingame CA 94010
lgoldman@burlingame.org

If to Millbrae: Tom Williams, City Manager
621 Magnolia Ave, Millbrae CA 94030
TWilliams@ci.millbrae.ca.us

(h) Cooperation of Parties. The Parties shall fully cooperate with one another and shall make a good faith effort to take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

(i) Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

(j) Binding Effect of Agreement. The terms, conditions, and provisions of this Agreement are binding upon, and shall inure to the benefit of, all Parties and to their executors, administrators, heirs, successors, assigns, predecessors, transferees, representatives, principals, agents, officers, directors, and employees.

(k) Further Acts. The Parties shall make a good faith effort to perform any acts and execute any documents consistent with the terms and conditions of this Agreement that may be needed, desired, or required to effectuate the terms, conditions, and provisions hereof.

(l) Jurisdiction. This Agreement is entered into in the County of San Mateo, State of California, and shall be interpreted pursuant to California law. If legal action is necessary to enforce any of the terms of this Agreement, such action shall be brought in accordance with the laws of the State of California in a court having appropriate jurisdiction.

(m) Consultation with Legal Counsel. The Parties represent that they have consulted legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

(n) Entire Agreement. This Agreement constitutes the entire and only agreement between the Parties with reference to the subject matter herein and supersedes any prior agreement, oral or written, with respect thereto.

(o) Drafting of Agreement. This Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

(p) Waiver, Modification, Amendment. No provision of this Agreement may be waived unless in writing and signed by the Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by the Parties hereto.

(q) Counterparts. This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures and email/PDF signatures, when received, shall have the same force and effect as original signatures.

WHEREFORE, the undersigned, having read the foregoing Agreement and fully understanding and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

[SIGNATURES ON FOLLOWING PAGE]

**COST SHARING AGREEMENT
SIGNATURE PAGE**

Dated: _____, 2024

TOWN OF HILLSBOROUGH

By: _____

Its: _____

Dated: _____, 2024

CITY OF BURLINGAME

By: _____

Its: _____

Dated: _____, 2024

CITY OF MILLBRAE

By: _____

Its: _____

EXHIBIT B

DRAFT FRAMEWORK FOR PROJECT OPERATING AGREEMENT

(1) Operation and Maintenance

- (a) Use of proposed facilities will be for potable and fire water supply systems, necessitating a high level of reliability as permitted and regulated under the State of California State Water Resources Control Board's Division of Drinking Water.
- (b) The Town will be responsible for paying SFPUC water charges for water delivered by SFPUC to the Project.
- (c) The Town will be responsible for the operation and maintenance of all Project components, except for the Emergency Pump Station for Millbrae. The Emergency Pump Station will be operated and maintained by Millbrae.
 - (i) The Town will provide an operator on-call 24 hours/day.
 - (ii) The Town will provide routine maintenance labor and materials.
- (d) Millbrae and Burlingame will pay a Facility Utilization Charge to reimburse the Town for the Participant's proportionate use and O&M of the Project. The charge will consist of the following components:
 - (i) An on call operator 24 hours a day,
 - (ii) Routine maintenance labor and materials,
 - (iii) Cost for replacement or repair of equipment less than \$10,000,
 - (iv) Electrical power, and
 - (v) Town overhead.
- (e) Costs will be apportioned between the Participants in accordance with the percentage of annual water consumption by each Party. A major equipment replacement fund is discussed in Paragraph 3 below and is not included in the Facility Utilization Charge.

(2) Measurement of Water Use

- (a) It is anticipated that there will be a master meter for the Project at the Helen Turnout and that there will be submeters for water delivered from the Project to each of the Participants.

- (b) All Project water meters shall be calibrated in accordance with manufacturer's recommendations but not less than once per year.
- (c) Water measurement for the Participants will be recorded daily and will be made available to the Participants.

(3) Project Components Replacement Fund

The Project Participants may consider establishing a Project Components Replacement Fund or may elect to fund major capital replacement infrastructure on a pay as you go basis based on needs assessment of Project components. Should the Participants elect to establish a Project Components Replacement Fund the following framework of process will apply:

- (a) The Town will establish a fund to pay for the cost of replacing or performing major repairs on equipment valued at over \$10,000. The amount of money to be put in the fund will be determined through an inventory of all equipment and components for the Project including the pipelines, valving, pumps, controls and instrumentation, and appurtenances, identifying a useful life for each component, and the anticipated timing of major repairs and replacements. This information will be used to determine the annual amount to be contributed to the fund by the Participants.
- (b) The Participants will have the opportunity to review and approve any proposed expenditure for Project equipment and components.
- (c) The amount contributed by each Party for replacement or major repair expenditures will be in proportion to each Party's dedicated pipeline capacity, or other equitable method as agreed upon by the Participants.
- (d) The Project Component Replacement Fund balance will be reviewed and updated annually based on the expenditures incurred and equipment functionality.
- (e) The Parties agree to budget their respective contributions through the Project Component Replacement Fund in their annual budget, to the extent such funding is available.

(4) Annual Operating Budgets

- (a) The Town will provide an annual proposed budget for the Participants' use no later than 90 days prior (April 1) to the start of the Fiscal Year (July 1). The budget will include information on the amount of monies in the Project Components Replacement Fund described above including interest earned.
- (b) The Participants will provide Project water use projections by month by March 1 for the Town's use in budget development.

- (c) The annual budget will take effect at the beginning of the Fiscal Year (July 1). The Town will provide quarterly budget status reports.
 - (d) The Facility Utilization Charge will be updated annually and take effect at the beginning of the Fiscal Year.
 - (e) The Project Participants will have the opportunity to review and confirm the proposed Facility Utilization Charge costs prior to the beginning of the Fiscal Year.
 - (f) The Project Participants will pay for Facility Utilization Charge costs quarterly, based on the approved Fiscal Year budget. At the end of the Fiscal Year, budgeted Facility Utilization Charge costs will be compared to actual Facility Utilization Charge costs incurred. The difference will be applied as a credit or supplemental charge to the following year's budget.
- (5) Assurances by the Town
- (a) The Town will operate and maintain the Project in a manner that ensures continuous, reliable service.
 - (b) The Town will develop and maintain a preventative maintenance program and share the program and preventative maintenance actions taken with the Participants.
 - (c) The Town will provide prompt and timely response to equipment failures and emergencies.
 - (d) The Town will prepare an Emergency Response Plan for Component 2 and provide it to the Participants for their review and approval.
 - (e) The Town will develop and keep up-to-date standard operating procedures including an operations and maintenance manual for all equipment at the Component 2 facility.
 - (f) The Town shall keep a log of all equipment failures, maintenance and repair, replacement activities, and preventative maintenance activities and provide those to the Participants at least quarterly or whenever requested.
- (6) Term of the Project Operating Agreement
- (a) The Agreement will remain in effect for 50 years and reviewed for updates and amendments every 5 years. After 50 years the Agreement will continue on a year to year basis unless otherwise amended by the Participants.
 - (b) Any amendments or modifications to the Agreement shall be agreed to in writing by all the Parties.

- (c) The Agreement can only be terminated with the written consent of all Participants. In the event that a Participant is in material breach of the Agreement, the non-breaching Participant(s) may withdraw from the Agreement after notice and an opportunity to cure.

Miscellaneous items:

The draft agreement shall include indemnification, force majeure, water quality, disputes, and other elements as identified by Participants.