

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT
AND THE CITY OF MANTECA REGARDING
PAYMENTS IN LIEU OF FRANCHISE FEES**

This Memorandum of Understanding Regarding Payments In Lieu of Franchise Fees is made and entered into as of the Effective Date, defined below, by and between the South San Joaquin Irrigation District, a California irrigation district (“**SSJID**”), and the City of Manteca, a California general law city (the “**City**”). SSJID and the City may be collectively referred herein as “**Parties**” and individually as “**Party**”.

RECITALS

WHEREAS, for over a century, SSJID has reliably provided irrigation water service within its service territory of approximately 72,000 acres located in the southern portion of San Joaquin County and including the City of Manteca; and

WHEREAS, SSJID has over time expanded the scope of services it provides to include treated water, raw water, drainage services, and wholesale electricity; and

WHEREAS, in 2009, SSJID filed an application to the San Joaquin Local Agency Formation Commission (“**SJ LAFCo**”) for a change of organization to add retail electric service to SSJID’s range of services (“**Retail Electric Project**”); and

WHEREAS, among the intended benefits of SSJID’s Retail Electric Project are increased local control, greater transparency and accountability to electric customers, an ongoing 15% discount off of Pacific Gas & Electric’s (“**PG&E**”) electric rates, a more diversified tax base, and stimulus to the local economy; and

WHEREAS, in view of the intended benefits of SSJID’s Retail Electric Project, on September 15, 2009, the City Council of the City of Manteca adopted Resolution No. R2009-345 supporting and endorsing SSJID’s plan to provide retail electric service within its service territory; and

WHEREAS, SSJID’s Retail Electric Project involves the acquisition of a portion of PG&E’s electric distribution assets and real property and the replacement of PG&E as the retail electric service provider in the territory; and

WHEREAS, PG&E is one of the largest payors of franchise fees and property tax in the area and SSJID’s acquisition of PG&E’s assets and property for SSJID’s Retail Electric Project would cause a loss of those revenues to the cities of Manteca, Escalon, and Ripon, as well as to San Joaquin County; and

WHEREAS, SSJID acknowledged that the benefits of the Retail Electric Project should not come at the expense of local governments and ensured that neither San Joaquin County nor the

cities of Manteca, Escalon, and Ripon should suffer a reduction in revenues, and to that end, SSJID adopted Resolution 14-12-E: Resolution of the South San Joaquin Irrigation District to Negotiate Agreements with Manteca, Escalon, and Ripon and San Joaquin County (which is attached hereto); and

WHEREAS, under Resolution 14-12-E, SSJID stated its intention to enter into agreements with the cities of Manteca, Escalon, and Ripon whereby those cities will receive the same amount of franchise fee revenue as they receive from PG&E; and

WHEREAS, in December 2014, SJ LAFCo held a public hearing on SSJID’s application and SJ LAFCo found that SSJID has the administrative, technical and financial ability to operate the electric distribution system in its territory and provide electric service; and

WHEREAS, SJ LAFCo further found that SSJID’s Retail Electric Project presented various public benefits including local control over electric rate setting and service, a reduction in retail electric rates, more disposable income for local residents to spend with local merchants, the enhanced attractiveness of the area to new employment-generating business due to lower electric rates, and a more diversified tax base due to new business generation, and thus SJ LAFCo conditionally approved SSJID’s Retail Electric Project; and

WHEREAS, SJ LAFCo, in conditionally approving SSJID’s application, determined that SSJID can and should make San Joaquin County and the cities of Manteca, Escalon and Ripon whole by providing those agencies with the same amount of revenue they receive from PG&E; and

WHEREAS, to that end, SJ LAFCo included Condition No. 2 to its approval of SSJID’s Retail Electric Project, which provides:

“SSJID shall allocate two and one-half percent of gross retail revenues to payments in lieu of franchise fees and property taxes as a cost of providing retail electric service, subject to the terms of agreements to be executed with the County of San Joaquin and the cities of Manteca, Escalon, and Ripon, to pay franchise fees to the three cities and county and property tax (unitary tax) to the county on behalf of itself and all of the districts in the county.”; and

WHEREAS, in 2015, PG&E commenced an action to challenge the validity of SJ LAFCo’s conditional approval of SSJID’s Retail Electric Project, including the validity of Condition No. 2’s requirement to make payments in lieu of franchise fees and property taxes (“**PILOTS**”) —to wit, *Pacific Gas & Electric Company v. San Joaquin Local Agency Formation Commission, et al.* (San Joaquin Superior Court Case No. 37-2015-00321743-CU-JR-STK) (the “**SJ LAFCo Case**”); and

WHEREAS, after an appeal in the *SJ LAFCo Case*, the Court of Appeal, Third Appellate District held that Condition No. 2 does not result in an unconstitutional tax, does not require SSJID to make a gift of public funds, and does not impose a tax for which voter approval is required

under Proposition 26 (Cal. Const., art. XIII C), and the trial court thereafter entered judgment in favor of SJ LAFCo and SSJID, and against PG&E; and

WHEREAS, at a duly noticed public hearing in June 2016, SSJID’s Board of Directors considered the adoption of a Resolution of Necessity pursuant to the California Eminent Domain Law to acquire by condemnation PG&E’s electric distribution assets and real property for the Retail Electric Project; and

WHEREAS, at the public hearing on the Resolution of Necessity, SSJID’s staff and consultants presented on, *inter alia*, the engineering aspects and financial feasibility of the Retail Electric Project, as well as the intended benefits of local control, reduced electric rates, savings to the community, and the attraction of new businesses and industries to the area; and

WHEREAS, after hearing and considering the presentations of SSJID’s staff and consultants, PG&E’s objections against the Retail Electric Project, and public comment, and duly deliberating on the matter, SSJID’s Board of Directors adopted a Resolution of Necessity pursuant to the California Eminent Domain Law; and

WHEREAS, SSJID thereafter filed a complaint against PG&E to acquire PG&E’s electric distribution assets and real property by eminent domain: *South San Joaquin Irrigation District v. Pacific Gas & Electric* (San Joaquin Superior Court Case No. STK-CV-UED-2016-0006638) (the “*Condemnation Case*”); and

WHEREAS, the trial court will set a trial date in the *Condemnation Case* on SSJID’s “right to take” PG&E’s electric distribution assets and real property upon the completion of the California Public Utility Commission’s determination that the proposed acquisition complies with Public Utility Code section 851; and

WHEREAS, in advance of the “right to take” trial in the *Condemnation Case*, the Parties wish to memorialize in a Memorandum of Understanding (“**MOU**”) the City’s continued support of SSJID’s Retail Electric Project; and

WHEREAS, as part of this MOU, the Parties’ wish to and do reserve all rights herein, including the right to negotiate and enter into a more formal agreement governing SSJID’s payments in lieu of franchise fees to the City; the City’s permission under Water Code section 22476 for SSJID to construct and operate electric light and power lines along, over, under, or upon any road within the City and the reasonable conditions for such permission; and any other rights, obligations, and responsibilities at such time SSJID obtains possession and ownership of PG&E’s electric distribution system; and

WHEREAS, SSJID’s Board of Directors and the City Council of the City of Manteca have each found, determined, and resolved that entry into an MOU will serve various public purposes including, but not limited to those previously identified above.

MEMORANDUM OF UNDERSTANDING

NOW THEREFORE, without prejudicing their right to subsequently negotiate and enter into a more formal written agreement governing SSJID's payments in lieu of franchise fees to the City, and any other permissions, rights, obligations, and responsibilities, the Parties confirm their mutual understandings in this MOU:

1. **Recitals**. The foregoing Recitals are true and correct and are incorporated by reference into this MOU.
2. **Purpose and Intent**. The purpose of this MOU is to memorialize and confirm the Parties' mutual understandings regarding SSJID's obligation to pay in-lieu franchise fees to the City in order to mitigate any financial impacts resulting from SSJID's Retail Electric Project. This MOU is also intended to set forth a non-binding procedure whereby SSJID and the City will identify the permissions, rights, obligations, and responsibilities that will be incorporated into a more formal written agreement governing the payments in lieu of franchise fees at such time SSJID obtains possession and ownership of PG&E's electric distribution system.
3. **Effective Date**. This MOU shall become effective as of the date the last Party executes this MOU ("**Effective Date**").
4. **Term**. The term of this MOU commences on the Effective Date and shall remain in effect until one (1) year after the resolution, including the exhaustion of all appeals, of the *Condemnation Case*, unless modified by written amendment executed by both Parties. This MOU may be terminated by either Party, with or without cause, upon thirty (30) days written notice to the other Party.
5. **Payments of In-Lieu Franchise Fees**. SSJID and the City understand and acknowledge that as a condition of SJ LAFCo's approval of SSJID's Retail Electric Project, SSJID is required to pay an amount equal to two and a half percent (2.5%) of its gross retail electric revenues ("**2.5% GRR**") as payments in lieu of franchise fees to San Joaquin County and the cities of Manteca, Escalon, and Ripon, and payments in lieu of property taxes to San Joaquin County.
 - a. **City of Manteca's Share of 2.5% GRR**. Within a reasonable time after SSJID obtains possession and ownership of PG&E's retail electric distribution system, the City and SSJID agree to meet to establish a methodology to calculate and determine the City's franchise fee revenues received from PG&E's electric utility and the City's share of the 2.5% GRR. The Parties agree to exchange the information necessary to make such calculation and determination.
 - i. The Parties may also establish a procedure to request an independent accounting of the 2.5% GRR and the City's share thereof for any future fiscal year.
 - b. Any time period(s), procedures, and methodology governing the calculation, determination, accounting, and payment of the 2.5% GRR and the City's share

thereof shall be set forth in a more formal written agreement governing the payments in lieu of franchise fees.

This Section shall not be construed as to bind SSJID to fund the 2.5% GRR or any in lieu payments from any specific source, revenue, or account, nor shall it prejudice or impair SSJID's discretion and prerogative to fund the 2.5% GRR or in lieu payments from any source or revenues permitted by law.

6. **Permission, Obligations, and Services of City of Manteca.** Within a reasonable time after SSJID obtains possession and ownership of PG&E's electric distribution system, the City and SSJID agree to meet to discuss the granting of permission to SSJID to construct and operate electric light and power lines along, over, under, or upon any road within the City pursuant to Water Code section 22476.

At such meeting, the Parties will discuss any services that the City may provide to assist, facilitate, and/or support SSJID's Retail Electric Project with the goal of maximizing the intended benefits to the public of SSJID's Retail Electric Project.

This Section shall not be construed as to bind the City to provide any specific services to SSJID and its Retail Electric Project. Any City services to be provided to SSJID and its Retail Electric Project shall be set forth in the more formal written agreement governing the payments in lieu of franchise fees.

7. **Amendments.** Either Party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by and between the Parties shall be incorporated into a written instrument, and effective when executed and signed by all Parties to this MOU.

8. **Governing Law.** This MOU shall be governed by the laws of the State of California. The Superior Court of the State of California, County of San Joaquin shall have original jurisdiction over any action arising out of this MOU and over the Parties.

9. **Integration.** This MOU represents the entire, integrated understandings between the Parties regarding the subject matter hereof and supersedes all prior negotiations, representations and agreements, whether written or oral.

10. **Construction.** All section headings are intended for reference and convenience purposes only, and in no way define, limit, or describe the scope or intent of any provisions herein.

11. **Severability.** Should any portion of this MOU be judicially determined to be illegal or invalid, the remainder of the MOU shall continue in full force and effect, and either Party may renegotiate the terms affected by the severance.

12. **Indemnification.** Pursuant to Government Code section 895.4, each Party agrees to fully indemnify, defend, and hold the other Party (including its appointed and elected officials, officers, employees, and agents) harmless and free from any damage or liability imposed for injury (as

defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its appointed or elected officials, officers, employees, or agents, under or in connection with any activities undertaken in connection with this MOU. No Party, nor any appointed or elected official, officer, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of any other Party, its appointed or elected officials, officers, employees, or agents, under or in connection, with any activities undertaken in connection with this MOU.

13. **Notices.** Any notice, demand or request required or permitted to be given or made under this MOU (“**Notice**”) shall be in writing and will be deemed given or made when delivered in person, or when sent by United States registered or certified mail, postage prepaid, to a Party at its address specified below, with email copy as follows:

<p>If to SSJID: <i>(by personal delivery)</i> Peter Rietkerk, General Manager South San Joaquin Irrigation District 11011 E. Highway 120 Manteca, CA 95336</p>	<p>If to the City: <i>(by personal delivery)</i> Toni Lundgren, City Manager Manteca City Hall 1001 W. Center Street Manteca, CA 95337</p>
<p><i>(by mail)</i> Peter Rietkerk, General Manager South San Joaquin Irrigation District P.O. Box 747 Ripon, CA 95366</p>	<p><i>(by mail)</i> Toni Lundgren, City Manager Manteca City Hall 1001 W. Center Street Manteca, CA 95337</p>
<p>Email: Peter.Rietkerk@SSJID.gov</p>	<p>Email: tlundgren@manteca.gov</p>
<p>In either instance, with copy to:</p>	<p>In either instance, with copy to:</p>
<p>Mia Brown, General Counsel South San Joaquin Irrigation District</p>	<p>David Nefouse, City Attorney City of Manteca</p>
<p>Email: Mia.Brown@SSJID.gov</p>	<p>Email: dnefouse@manteca.gov</p>

The Parties may modify the recipients and/or change the addresses for Notice by notifying the other Party in the manner provided in this section.

14. **Signatures.** The parties to this MOU through their duly authorized representatives have executed this MOU on the dates set forth below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein. This MOU may be executed by a Party's signature transmitted by facsimile or electronically, and copies of this MOU executed and delivered by such means shall have the same force and effect as copies hereof executed and delivered with original signatures. This MOU may be executed in counterparts, all of which will

constitute one MOU. A copy or original of this document with all signature pages appended together will be deemed a fully executed, original MOU.

15. **No Presumption Against the Drafter.** This MOU shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.

In witness of and in agreement with the terms and conditions of this MOU, the Parties, by their duly authorized representatives, affix their respective signatures:

SOUTH SAN JOAQUIN IRRIGATION DISTRICT , a California irrigation district, By: _____ Peter Rietkerk, General Manager Dated: _____ Approved as to form: By: _____ Mia Brown, General Counsel	CITY OF MANTECA , a California general law city, By: _____ Toni Lundgren, City Manager Dated: _____ Approved as to form: By: _____ L. David Nefouse, City Attorney
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RESOLUTION NO 14-12-E

**RESOLUTION OF THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT
TO NEGOTIATE AGREEMENTS WITH MANTECA, ESCALON, RIPON
AND SAN JOAQUIN COUNTY
AMENDING AND RESTATING RESOLUTION 12-13-E**

WHEREAS, South San Joaquin Irrigation District (“District”) is considering whether to exercise its legal authority under Water Code section 22115 to provide retail electric service by acquiring existing electric distribution facilities owned and operated by Pacific Gas & Electric Company, and

WHEREAS, the District’s purpose in providing retail electric service include investing its capital, and a portion of future Tri-Dam revenues if necessary, to acquire, own and operate the electric distribution system in the area in order to lower the costs of providing electric service and lower retail electric rates, which will provide long-term stimulus to and economic growth in the local economy; transferring responsibility and accountability for local electric resource policies and practices within SSJID’s existing territory from PG&E to locally elected public officials accountable to voters in the communities SSJID serves; and increasing local influence over and accessibility to retail electric customer service, and increasing local influence over energy resource policies, while at the same time not causing the cities within the District or the County of San Joaquin to experience reduced revenue from loss of franchise fees or property taxes (which term is used herein to include taxes charged to unitary and nonunitary property by the State Board of Equalization)that may currently be paid by Pacific Gas & Electric Company on account of its ownership and operation of electric distribution facilities, and

WHEREAS, many of the electric distribution facilities needed to provide retail electric service within the District are located in streets, roads, highways and other public rights of way built, repaired and maintained by San Joaquin County and within the Cities of Manteca, Escalon and Ripon, and

WHEREAS, the District will require additional fire protection, police services and other public health and safety services from San Joaquin County and the Cities of Manteca, Escalon and Ripon as a result of expanding the services it provides to include retail electric service, and

WHEREAS, it is in the public’s interest for the District to ensure that neither San Joaquin County or other public agencies nor the Cities of Manteca, Escalon and Ripon suffer a reduction in revenues, including revenues required to properly construct, repair and maintain streets, roads, highways and other public rights of way or to provide fire protection, police services and other public health and safety services as a result of the District providing retail electric service, and

WHEREAS, it is in the public’s interest for the District to ensure in its permission agreements with the Cities of Manteca, Escalon and Ripon under Water Code section 22476, that the Cities receive the same amount of revenue, including revenue necessary

for fire protection, police services and other public health and safety services and for the use of streets and roads within the Cities, that they currently receive through franchise fees from Pacific Gas & Electric Company on account of its ownership and operation of electric distribution facilities, and

WHEREAS, it is in the public's interest for the District to ensure through agreement with the County that the County will receive the same amount of property tax and franchise revenue, including revenue necessary for fire protection, police services and other public health and safety services and for use of streets, roads highways and other public rights of way within the County and including the portion of property tax revenue the County now receives and distributes to other public agencies within the County, as it currently receives on account of Pacific Gas & Electric Company's ownership and operation of electric distribution facilities service located within County, and

NOW THEREFORE, BE IT RESOLVED that:

1. The District is committed to providing the same amount of revenue to the Cities of Manteca, Escalon and Ripon, if the District acquires electric distribution facilities owned and operated by Pacific Gas & Electric Company, as they currently receive through franchise fees on account of Pacific Gas & Electric Company's ownership and operation of such facilities.
2. The District is committed to providing the same amount of revenue to San Joaquin County, if the District acquires electric distribution facilities owned and operated by Pacific Gas & Electric Company, as the County currently receives through franchise fees and property taxes on account of Pacific Gas & Electric Company's ownership and operation of such facilities, plus an annual inflation adjustment. The District's commitment includes the portion of property taxes the County now receives and distributes to other public agencies within the County.
3. District staff is directed to meet with officials of Manteca, Escalon and Ripon and the County of San Joaquin on behalf of itself and the other affected public agencies to negotiate agreements to accomplish the foregoing objectives for the Board's approval, in order to assure the District's right to use public rights of way necessary to provide retail electric service, and to memorialize the District's commitment to furnish these agencies with the same amount of revenue as is currently received, including revenues required to properly construct, repair and maintain streets, roads, highways and other public rights of way and to provide fire protection, police services and other public health and safety services, as a result of the District providing retail electric service as described above.
4. The District agrees that the San Joaquin Local Agency Formation Commission may condition its approval of the District's application to provide retail electric service by requiring that the District, as a cost of

providing retail electric service, make payments in lieu of franchise fees and property taxes subject to terms of agreements to be executed with the Cities of Manteca, Escalon and Ripon and the County of San Joaquin.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

PASSED AND ADOPTED this 9th day of September 2014, by the following roll call vote:

AYES:	HOLBROOK HOLMES KAMPER KUIL
NOES:	ROOS
ABSTAIN:	NONE
ABSENT:	NONE

The undersigned Secretary of South San Joaquin Irrigation District certifies that the foregoing Resolution was adopted by the Board of Directors at a meeting held on September 9, 2014

ATTEST:


Jeff Shields, Secretary