



Desalination Task Force Minutes Wednesday, July 18, 2007

The Desalination Task Force consists of two members of the Soquel Creek Water District Board and two members of the City of Santa Cruz City Council.

For the purpose of preparation of the minutes the following terms will be used throughout the current and all future minutes. The City of Santa Cruz/Soquel Creek Water District Desalination Task Force will be referred to as the “Task Force.” The City of Santa Cruz will be referred to as the “City” and the City of Santa Cruz Water Department will be referred to as the “SCWD.” The Soquel Creek Water District will be referred to as “SqCWD.” A member of the Soquel Creek Water District Board of Directors will be referred to as “Director” and the Soquel Creek Water District General Manager will be referred to as “General Manager.” A member of the Santa Cruz City Council will be referred to as “Councilmember” and the Director of the City of Santa Cruz Water Department will be referred to as “Water Director.”

Call to Order Vice Chair B. Daniels called the meeting to order at 4:00 p.m. in the Soquel Creek Water District Board Room.

Roll Call

Present: Director B. Daniels, Director D. Kriege, and Councilmember C. Mathews (Alternate/M. Rotkin) and Councilmember E. Porter (arrived at 4:55 p.m.).
Absent: Councilmember M. Rotkin absent with notice.
Staff: General Manager L. Brown, Water Director B. Kocher, Administrative Assistant D. Paul, and SqCWD Special Projects Engineer M. Schumacher.

Presentation There were no presentations.

Statements of Disqualification There were no statements of disqualification.

Oral Communications There were no oral communications.

Announcements

Director Kocher reported that State Water Resources Control Board (SWRCB) held a public scoping meeting on June 26, 2007 on proposed amendments to the California Ocean Plan. He explained that Issue No. 10 relates to Desalination Facilities and Brine Disposal. The Association of California Water Agencies has taken a position that Alternative 1-No Action be

selected and that the SWRCB make determinations on a case by case basis. The public comment period closes on July 27, 2007 and the task force will need to act today if it would like to submit its comments.

Councilmember C. Mathews moved to make the finding that the need to act arose after the agenda was posted and action is needed prior to the next meeting to add Letter of Support for Item 10, Alternative 1, No Action, California Ocean Plan Amendment to the agenda. Director D. Kriege seconded.

VOICE VOTE: MOTION CARRIED

AYES: Daniels, Kriege and Mathews.

NOES: None.

ABSENT: Porter

Councilmember C. Mathews moved to request that staff prepare a Letter of Support for Item 10, Alternative 1, No Action, California Ocean Plan Amendment for signature by the Chair M. Rotkin and Vice Chair B. Daniels. Director D. Kriege seconded.

VOICE VOTE: MOTION CARRIED

AYES: Daniels, Kriege and Mathews.

NOES: None.

ABSENT: Porter.

General Manager Brown reported that Department of Water Resource staff toured the Pilot Plant site and grant funding was discussed. Staff is proposing that the scope of the grant be changed from engineering design to the intake study.

Approval of Minutes

Director D. Kriege moved to approve the minutes of the June 20, 2007 Desalination Task Force meeting as submitted. Director B. Daniels seconded.

VOICE VOTE MOTION CARRIED

AYES: Daniels and Kriege.

NOES: None.

ABSENT: Porter.

ABSTAIN: Mathews.

Informational Items No action was taken on this item.

General Business

1. Memorandum of ~~Understanding~~ Agreement (MOA)

General Manager Brown reported on the efforts of both agencies in creating the MOA. The City Water Commission comments of July 2, 2007 are included. Upon task force acceptance, it will be presented to both agencies for approval.

The Task Force took the following actions on the on the Water Commission comments:

1. Concur with comment and staff response.

2. Concur with staff response
3. Concur with comment and staff response. Incorporate proposed Section 3 and Section 10.A language in the MOA.
4. Concur with staff response
5. Concur with staff response

A strikeout version of the MOA will be attached to the minutes as record of the task force comments.

Councilmember C. Mathews moved to make the following changes to the Draft City of Santa Cruz and Soquel Creek Water District Memorandum of Agreement to Create a Joint Task Force to Pursue the Feasibility of Construction and Operation of a Seawater Desalination Facility:

Add Recital I: Both parties agree that this process needs to move as quickly as possible because of the critical water shortages both agencies face and because of the increasing cost of construction over time.

Section 3: First Sentence. Add provide a forum for public input on the project, after proposed 2.5 mgd desalination facility.

Section 7: Delete Regular from the Section Heading and add the Chair may call a special meeting.

Section 10 Specific Authority. Subsection a. Add provide a forum for public input on the project, after proposed 2.5 mgd desalination facility.

Subsection b. Add Oversee a public outreach program intended to inform the public about all aspects of the Project and provide opportunities for public input.

Section 14. Member Contributions

Subsection b. Change developing to investigations

Subsection c. Add and Construction to the heading. Insert at the end of the first sentence excluding any rights-of-way or easements that solely benefit only one agency. Insert in the second sentence after property and construction

Director D. Kriege seconded.

VOICE VOTE: MOTION CARRIED

AYES: Daniels, Kriege and Mathews.

NOES: None.

ABSENT: Porter.

2. Organizational Structure/Responsibilities and Work Plans

Revised job descriptions for Program Managers, Desalination Program Coordinator and Public Outreach Coordinator were provided.

General Manager Brown reported that the work plan presented today deviates slightly from the task force direction of the last meeting. Staff from both agencies worked together to develop this model to complete the investigative phase of the project.

Task Force Comments

A person or agency may be needed to work on policy issues, permitting, and the Environmental Impact Report.

Confidence was expressed in the professional abilities and working relationships both General Manager Brown and Director Kocher.

Councilmember C. Mathews moved to approve the proposed organizational structure and revised descriptions of responsibilities for Task Force Program Managers, Desalination Program Coordinator and Public Outreach Coordinator. It was further moved that this effort will function as a team and the structure will evolve as the project proceeds. Director D. Kriege seconded.

VOICE VOTE: MOTION CARRIED

AYES: Daniels, Kriege and Mathews.

NOES: None.

ABSENT: Porter.

3. August Meeting Schedule

Councilmember C. Mathews moved to cancel the regular meeting scheduled for August 15, 2007 and hold a Public Outreach Program Workshop on August 20 or August 21 (preferable) at a Santa Cruz location. Councilmember E. Porter seconded.

VOICE VOTE: MOTION CARRIED

AYES: Daniels, Kriege, Mathews and Porter.

NOES: None.

ABSENT: None.

4. Task Force Reference Binders

Task Force Reference Binders were provided at the meeting.

Program Managers' Report

Director Kocher reported that monthly updates will be provided on each of the items listed below.

A. Work Schedule

The University issued the permit for the pilot plant on June 7th and the Coastal Commission permit was issued June 20th. Construction is underway. Testing should begin in November. The schedule has slipped one month but the contractor has indicated that he may be able to make up some time on construction.

B. Upcoming Tasks

Site work has begun and will continue. The installation of building is scheduled for August 7th.

C. Additional or Amended Tasks

An energy study of the full scale plant is needed. An RFP will be provided for task force review and discussion on a future agenda. It will be included on the schedule and be added to the project coordinators work list.

D. Contacts with Regulatory Agencies/Requests from Regulatory Agencies

On May 21st the Regional Water Quality Control Board requested additional information on behalf of the Monterey Bay National Marine Sanctuary. The information was sent on June 22nd.

E. Public Outreach Program

The Press Release has been included in the packet. The University heard about it and asked to review it. The university has requested that its name be mentioned in the press release and has appointed a Contact Person for future correspondence. A photo shoot is being put together for Friday morning and local news agencies will be invited to attend.

The task force made the following changes to the Press Release:

Paragraph 3-Bruce Daniels, president of the Soquel Creek Water District's Board of Directors and a member of the Task Force, stated: "Both agencies have identified desalination as the best option, in combination with water conservation and curtailment (temporary water use restrictions), to preserve groundwater supplies and deliver a flexible and reliable water source during drought periods."

Paragraph 7-Santa Cruz City Councilmember Mike Rotkin, who also serves on the Task Force, stated: "The Seawater Desalination Pilot Test Program is part of the initial investigative stage required to evaluate issues related to public safety, environmental protection and plant operations."

F. Report of Findings

This item will report on any findings on the final design, new information, or impacts that will affect one agency more than the other. In most cases, Report of Findings items will be General Business items.

Items Initiated by Members for Future Agendas

Staff is requested to perform an evaluation of the Project Schedule and explore options for accelerating the project for the September meeting.

Adjournment

The meeting was adjourned at 5:36 p.m. until the next regular meeting of the Desalination Task Force scheduled for Wednesday, September 19, 2007 at 4:00 p.m. in the Soquel Creek Water District Board Room.

**CITY OF SANTA CRUZ
AND
SOQUEL CREEK WATER DISTRICT**

**MEMORANDUM OF AGREEMENT TO CREATE A JOINT TASK
FORCE TO PURSUE THE FEASIBILITY OF CONSTRUCTION AND
OPERATION OF A SEAWATER DESALINATION FACILITY**

This Agreement is entered into by and between the City of Santa Cruz, California, a body politic and charter city (hereinafter “CITY”) and the Soquel Creek Water District (hereinafter “SqCWD”) a County Water District organized pursuant to sections 30000 et. seq. of the California Water Code.

RECITALS

A. City is responsible for providing water to the residents of the City of Santa Cruz and additional customers outside the City limits within the County of Santa Cruz and a portion of the City of Capitola.

B. SqCWD is responsible for providing water to citizens in the City of Capitola and the unincorporated communities of Soquel, Seacliff, Aptos, Rio Del Mar, Seascape and La Selva Beach.

C. City’s main sources of supply for water are surface water diversions with some groundwater sources; SqCWD’s sole sources of supply for water are groundwater wells.

D. City has conducted extensive studies demonstrating the need to supplement its water supplies during periods of drought and has concerns about the potential of seawater intrusion impacts on its groundwater sources; SqCWD has concerns about over pumping of its groundwater supply and the potential of seawater intrusion.

E Both parties have conducted extensive public studies on various alternative supplemental supplies that have concluded that a jointly operated seawater desalination facility is the preferred project to meet the needs of both parties. The parties recognize the mutual benefit of a desalination facility which would permit SqCWD to provide a supplemental source of supply to relieve the pressure on its groundwater resources and, in time of drought, provide an alternate source of supply to City.

F The parties recognize that a joint effort provides economies of scale and furthers interagency cooperation, which thereby improves the public health, safety and general welfare.

G Both parties have the power to acquire, construct and operate a desalination facility and the parties propose, by this agreement, to cooperate and coordinate on a regional project in order to provide more efficient operations, lower capital and operating costs and greater public benefit than acting independently

H. The parties wish to enter into an agreement to complete the investigative process, including the construction and operation of a pilot plant, that could lead to implementing the construction and operation of a 2.5 million gallon per day full-scale seawater desalination facility to serve both parties.

I. Both parties agree that this process needs to move as quickly as possible because of the critical water shortages both agencies face and because of the increasing cost of construction over time.

NOW THEREFORE, because it is in the best interests of the parties to enter into this Agreement for the reasons set forth above, the parties agree as follows:

1. Creation of Joint Task Force.

To carry out the terms of this Agreement, the parties have elected to create a joint task force (hereinafter referred to, interchangeably, as either “Joint Task Force” or “Task Force”) composed of members of both agencies to carry out the activities described herein on the terms and conditions hereinafter provided.

2. Effective Date.

The effective date of this Agreement is the date this Agreement is signed by the latter of the Parties to do so, or any such other date mutually selected by the parties for convenience.

3. Purpose.

The purpose of this Agreement shall be to cooperatively complete the investigative phase, including required studies, design, environmental review, and permitting for the proposed 2.5 mgd seawater desalination facility, provide a forum for public input on the project, and formulate an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental water supply, the contractual relationship between the two agencies and ongoing governance

structure should the project proceed. It is understood that the City of Santa Cruz has anticipated the need for future desalination capacity in excess of 2.5 mgd and that plant expansion is outside the purpose of this Agreement and will be pursued independently by and at the sole discretion of the City.

4. Designation of Joint Desalination Task Force.

The work program set forth in this Agreement shall be directed by a Joint Task Force, the members of which shall be selected and serve as follows:

- a. Each Party shall designate and appoint two members of its governing body to serve as Members of the Joint Task Force, each of whom shall have a single vote on matters coming before the Task Force. To the extent possible, the Parties shall attempt to select Task Force Members that have different terms of office to provide continuity on the Task Force.
- b. Each Party shall also designate one Alternate Task Force Member who shall also be a member of that Party's governing body who shall be authorized to act only in the absence of his or her corresponding Task Force Member with the same vote and authority as such Task Force Member. An alternate attending meetings at which he/she is not filling in for an absent member shall have the same status as a member of the public.

5. Officers of the Joint Task Force.

The officers of the Joint Task Force shall consist of a chair and vice-chair. The chair and vice-chair shall be selected by a majority vote of the Task Force. The chair and vice-chair shall serve one-year terms co-extensive with the fiscal year. When the chair is elected from one agency, the vice-chair shall be from the other.

6. Compensation.

Neither officers nor Members of the Joint Task Force shall receive compensation other than that provided by their respective affiliate jurisdiction for attendance at meetings as a member of the governing board and for service rendered as a Board/Council member by request of the Board/Council.

7. Joint Task Force Meetings.

- a. **Regular Meetings:** The Task Force shall determine the frequency of regular meetings and shall specify by motion, the date, hour and place at which regular public meetings shall be held; the Chair may

call a special meeting.

- b. **Call, Notice and Conduct of Meetings:** All meetings of the Task Force, including without limitation, regular, adjourned and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et. seq.)
- c. **Minutes:** A qualified staff member from one of the Parties or an independent contractor specifically retained for this purpose shall serve as the Secretary of the Task Force and shall cause minutes of all meetings to be kept and shall cause copies of the minutes to be provided to each Member and Alternate Member in a timely manner and made available to the public.
- d. **Quorum:** A quorum of the Task Force shall consist of three Members or Members and Alternate Members. Less than a quorum may adjourn a meeting.
- e. **Rules:** The Task Force may adopt from time to time such rules and regulations to conduct its affairs as may be required.
- f. **Vote or Assent of the Task Force:** It is the hope that the Joint Task Force shall arrive at decisions by consensus, but in the event consensus is not possible, at least three votes of the Task Force shall be required to approve any matter before it.

8. **Agents and Employees**

The City of Santa Cruz Water Director and the Soquel Creek Water District General Manager shall have joint responsibility for supervising and directing the work program as set forth in this Agreement and otherwise carrying out direction from the Task Force, and both shall answer to the Task Force with respect to their performance in this role. Any officer, agent or employee serving the Task Force can also be an officer, agent or employee of either Party. Assignment to activities in support of the Task Force of such a person shall evidence that the two positions are compatible. All of the privileges and immunities from liability, exemption from laws, ordinances, and rules, and all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of any of the Parties when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. Any agent exclusively serving the Task Force shall be under

the direction of both the City of Santa Cruz Water Director and the Soquel Creek Water District General Manager. The manner of compensating said agents shall be determined by the Task Force with the approval of the agencies.

Both agencies shall insure that its employees and agents working for the Task Force shall have the same insurance, immunities and benefits that they would have as employees or agents of the respective entities.

9. General Authority

The Joint Task Force shall have the authority to take the following actions:

- a. To oversee and guide the project through the investigative stage, including reviewing results and making decisions among options.
- b. To establish such bylaws and rules and regulations as may be necessary for the operation and conduct of the Task Force's business.
- c. To review and recommend the proposal, scope of work, and terms and conditions of consulting agreements associated with the project.
- d. To exercise any power conferred upon it by agreement of the Parties provided said power is in furtherance of this Agreement.
- e. To review and approve applications for permits on behalf of the Parties in connection with any Project or Projects as authorized by the Parties.
- f. With approval of the Parties, to apply for, receive and disburse funds whether provided by the Parties or any other third party source, including but not limited to, grant funds from the State of California or the United States of America.

10. Specific Authority

The Joint Task Force is hereby empowered to:

- a. Oversee and direct preparation of and development of studies and plans for a 2.5 mgd seawater desalination Project, including, but not limited to, design, environmental review, ~~and~~ permitting for the proposed seawater desalination facility, provide a forum for public input on the project and formulate an operational agreement

prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed and similar activities with respect to the Pilot Project currently being undertaken by the City of Santa Cruz.

- b. Adopt a work plan and schedule on an annual basis or more frequently as deemed appropriate. Oversee a public outreach program intended to inform the public about all aspects of the Project and provide opportunities for public input.
- c. Recommend to the governing bodies approval of contracts with public or private entities, firms, corporations, partnerships or persons for expert professional consulting services or technical assistance for purposes of implementing the aforementioned project.
- d. Recommend to the governing bodies retention of dedicated staff and consultants as necessary to complete the scope of work approved by the Task Force.
- e. Prepare and recommend adoption of an annual fiscal year budget for costs associated with the seawater desalination Project investigation and development.
- f. Receive, accept and utilize the services of personnel offered by any of the Parties, or their representatives or agents; receive, accept, and utilize property, real or personal, from any of the Parties or their representatives or agents.
- g. Develop the concepts for an operational plan for the Facility for presentation to and final approval by the full legislative bodies of the respective parties. This operational plan shall include, but not be limited to, policies for determining when each agency would have primary use of the plant, including defining drought conditions and allowing for the possibility of joint operation in order to achieve groundwater recovery following a drought or to address groundwater issues of mutual concern to both parties.
- h. Should both Parties ultimately agree to proceed with constructing the full-scale Facility, develop recommendations for ongoing governance, cost sharing, ownership and operation of the full-scale Facility.

11. Restrictions

The scope of the Joint Task Force is limited as follows:

- a. The Joint Task Force is limited to: 1) consideration of matters related to investigative phase, including required studies, design, environmental review, and permitting for the proposed 2.5 mgd seawater desalination facility, including a pilot facility; and 2) formulating an operational agreement prescribing the conditions under which each agency shall be entitled to utilize the project for supplemental water supply, the contractual relationship between the two agencies and ongoing governance structure should the project proceed. The Joint Task Force has no power with respect to the operation of either of the Parties' other water supply, storage, transmission, or other water operations.
- b. The Joint Task Force has no ability to make financial commitments on behalf of either of the Parties, although it can make recommendations and requests to the respective legislative bodies of the Parties concerning financial matters.

12. Committees

The Joint Task Force may establish such advisory committees as it deems appropriate to advise the Task Force on matters relating to implementation of any aspect of the Project or associated Program. Such committees shall be composed of such persons as the Task Force shall determine; provided, however, that such membership shall not necessarily be limited to persons representing, or associated with, the Parties. The purpose and the function of any such committee or committees shall be specified by the Task Force.

13. Funds and Expenditures

This Agreement requires strict accountability of all funds and reporting of all receipts and disbursements as follows:

- a. Each and every expenditure of moneys shall be authorized or approved by the legislative bodies of both Parties or by the City of Santa Cruz Water Director and the Soquel Creek Water District General Manager that is within their respective administrative authority.
- b. Before the Task Force may expend any moneys or incur any financial obligation, it shall adopt an annual Fiscal Year Budget

showing proposed expenditures for the applicable Fiscal Year and the proposed means of financing such expenditures. The Budget shall be adopted on or before April 30 of each year for the ensuing Fiscal Year and submitted to the parties along with their respective funding obligations for inclusion in their individual budget development. Provided, however, that for the first Fiscal Year of the Task Force's existence, the budget shall be adopted by the Task Force within ninety (90) days of the effective date of this Agreement.

- c. The Finance Officer of the City of Santa Cruz shall be appointed as Treasurer for the Project. The Treasurer shall periodically present to the Task Force during each Fiscal Year a financial report accounting for all moneys received and disbursed for the report period.
- d. The Treasurer shall be the depository and custodian of all dedicated Project funds.
- e. All books and accounts shall be maintained for the Project in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall ensure strict accountability of all funds and reporting of all receipts and disbursements associated with the Project in accordance with Generally Accepted Accounting Principles (GAAP) and the accounting rules and policies applicable to government agencies within the State of California.
- f. As part of the City of Santa Cruz annual audit, the records and accounts of the Task Force shall be audited annually by an independent certified public accountant and copies of such other reports shall be filed with each Member within six (6) months of the end of the Fiscal year under examination.
- g. The governing body of the Party employing the Treasurer shall determine the charges to be shared by the Parties for the services of the Treasurer, provided, that such charges shall not exceed the actual costs for such services.

14. Member Contributions

The parties agree that the costs for the investigative phase of the Project will be shared as follows:

- a. **Pilot Plant Costs.** The parties shall contribute equal shares for all of

the costs incurred for designing (including all studies required), developing, constructing and operating the pilot plant for the duration of the test period after deduction of any grant funds received from third parties.

- b. **Investigative Studies and Full Scale Facility Costs.** The parties shall contribute equal shares of the costs for designing, developing investigations, environmental review, and permitting the full scale Facility after deduction of any grant funds received from third parties.
- c. **Acquisition of Property and Construction.** The parties shall contribute equal shares for commitments necessary to secure a site and associated rights-of-way for the full scale project excluding any rights-of-way or easements that solely benefit only one agency. Actual purchase of property and construction will be by separate agreement as it is beyond the scope of the Task Force.
- d. **Staffing.** Both parties will provide support from existing staff and dedicated staff or independent contractors may be retained as needed to support the Project. Actual costs incurred by each party for staff and/or independent contractors will be tracked and submitted to the Treasurer on an annual basis to issue reimbursements as appropriate to result in the equal sharing of costs by both parties.
- e. **Reimbursement of Existing Costs.** Each party shall reimburse the other for 50% of any costs described above which have been incurred prior to this agreement.

15. Amendments

This Agreement may be amended at any time, or from time to time, except as may be limited by contract with holders of bonds or other evidences of indebtedness issued jointly or independently by the Parties or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the Parties who are then Parties hereto, either as required in order to carry out any of the provisions of this Agreement, or for any Project, or for any other purpose, including without limitation, addition of new Parties, including any legal entities heretofore or hereafter created, in pursuance of the purposes of this Agreement.

16. Addition of Parties

A Party or Parties may be added to this Agreement, upon request,

evidenced by submission of a certified copy of a resolution adopted by the governing body of the public agency requesting to be a Party to the Agreement. Such requests, as pertain only to the initial 2.5 mgd facility, must be approved by the governing bodies of all of the existing Parties to the Agreement. The Joint Task Force may require a party seeking to join the Agreement to meet any terms and conditions the Task Force deems appropriate.

17. Withdrawal of Party

Either Party may withdraw from this Agreement at any time until both Parties are prepared to award a contract for the construction of the permanent Facility. Any withdrawal prior to that time shall be on not less than thirty (30) days written notice to the other Party provided, however, that no award of bid for the Full Scale Plant Project shall take place until the amount of all bids has been communicated to all Parties for at least a 60-day period prior to any award. Upon providing a notice of withdrawal, the withdrawing Party shall be responsible for its contractual share of all costs and expenses and other obligations assumed by the Parties as provided herein up to the date of withdrawal. The withdrawing party shall reimburse the remaining party for said costs, expenses and other obligations within 90 days of the date of notice of withdrawal.

18. Term and Termination

This Agreement shall continue until terminated as specified in this paragraph. This Agreement may be terminated upon the conclusion of any Fiscal Year by an agreement executed by all of the Parties which are then parties hereto, which agreement shall be approved by the governing bodies of each of such Parties, and shall include satisfaction of all outstanding debts, obligations and liabilities for Capital Expenditures, debt services for bonds or other evidences of indebtedness, and Operation and Maintenance Costs incurred by the Task Force. Upon termination, each Party shall be entitled to receive such property and surplus money of the Task Force as lawfully may be distributed in proportion to each Party's respective contribution to all of the Projects of the Task Force or in such other manner as shall be agreed upon by all of said Parties. Until such distribution is agreed upon, such property and money shall be held in trust by the Treasurer for all of said Parties.

19. Successors; Assignment

This Agreement shall be binding upon and inure to the benefit of the successors or assigns of the Parties. No Party may assign any right or obligation herein without the written consent of each of the other Parties.

20. Governing Law

The parties agree that this agreement is executed in the State of California and that the law of the State of California shall govern this agreement.

21. Severability

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, or provisions shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year set opposite the name of each of the Parties.