

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

**AGREEMENT ENDORSING RECOMMENDATIONS OF JOINT TASK FORCE  
ON SEAWATER DESALINATION FACILITY**

This Agreement is entered into as of April 6, 2010 by and between the City of Santa Cruz, 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. In August 2007, the CITY and SqCWD entered into a "Memorandum of Agreement to Create a Joint Task Force to Pursue the Feasibility of Construction and Operation of a Seawater Desalination Facility" (hereinafter "2007 Agreement"). This 2007 Agreement was consistent with then-existing City and SqCWD policies as set forth respectively in the City's 2005 Integrated Water Plan and 2006 Urban Water Management Plan and the SqCWD's 2006 Integrated Resources Plan and 2005 Urban Water Management Plan. All of these documents contemplate the City and SqCWD ultimately developing some sort of desalination facility, either locally or regionally in partnership with each other.
- B. The 2007 Agreement remains in full effect and is attached to this Agreement.
- C. The 2007 Agreement authorized the Task Force to, among other things:
- Oversee and direct preparation and development of studies and plans for a 2.5 million gallons per day (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. (Section 10.a)
- The 2007 Agreement also authorized the Task Force to adopt a work plan and schedule for the project. (Section 10.b)
- D. The Task Force has met regularly, commissioned studies on various aspects of a shared desalination facility, and provided substantial public outreach through its meetings and website.
- E. The Task Force has reported that all studies and analyses presented to it suggest that a shared desalination facility will help each party achieve important water supply goals, including those identified in the Recitals to the 2007 Agreement.

- F. The Task Force has also submitted (1) a summary project description, (2) a current schedule extending through 2010, (3) an outline of steps to be taken by each party during the preparation and public review of documents addressing environmental aspects of the project, and (4) recommendations for elements to be incorporated into an operational agreement which will be formally adopted by both parties prior to a decision to proceed with construction of the project.
- G. The purpose of this Agreement is to memorialize the Task Force's submissions and their endorsement by the governing bodies of both parties.

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:

#### **SECTION 1. SUMMARY PROJECT DESCRIPTION FOR PURPOSES OF ENVIRONMENTAL REVIEW**

For purposes of conducting environmental review, the CITY and SqCWD tentatively envision constructing and operating a seawater desalination facility with a production capacity of 2.5 million gallons per day, though the environmental impact report (EIR) for the project will consider potentially feasible alternatives to this proposal, as well as the required No Project Alternative. The project description in the EIR will include the following principal elements:

- A. a seawater intake system;
- B. conveyance piping from the intake to the desalination facility;
- C. a desalination facility consisting of pre-treatment filtration, reverse osmosis desalination, post-treatment conditioning and disinfection;
- D. potable water conveyance piping to the CITY distribution system and a new interconnection between the CITY and SqCWD distribution systems;
- E. brine conveyance piping and ocean-discharge outfall.

#### **SECTION 2. ENVIRONMENTAL REVIEW PROCESS**

- A. Both parties recognize the importance of conducting a thorough review of the potential impacts of the desalination project on the environment, methods of mitigating such impacts, and evaluation of potentially feasible alternatives that could achieve most of the project's basic objectives while avoiding or substantially lessening any of the significant environmental impacts of the proposed project, as well as the mandatory No Project Alternative. To that end, the CITY has awarded a contract for the preparation of appropriate environmental documents as may be required under the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").

- B. The Task Force has recommended that, consistent with section 15051, subdivision (d), of the CEQA Guidelines, the CITY and SqCWD serve as co-lead agencies for purposes of environmental review under CEQA. Both parties are willing to do so, subject to input on this issue from the selected environmental consultant as called for in the scope of work incorporated in the Request for Proposals issued by the CITY on behalf of the Task Force.
- C. The Task Force envisions the basic process through which the parties can implement the environmental review as co-lead agencies as follows:
1. At least one scoping session will be held in the CITY service area and at least one scoping session will be held in the SqCWD service area.
  2. Staffs of both parties will review and comment on the administrative draft of the environmental document prior to its publication for public review and comment.
  3. Following publication of the draft environmental document, at least one public comment session will be held in the CITY service area and at least one public comment session will be held in the SqCWD service area.
  4. The legislative bodies of both parties will hold a joint public hearing on the environmental document. Following the public comment session, each legislative body will decide independently on whether to certify the document, and will independently adopt findings of fact, a statement of overriding consideration (if appropriate), and the mitigation monitoring and reporting program.
  5. If the parties' legal counsel advise that the parties should prepare and execute a more detailed agreement for implementation of co-lead agency/joint lead agency responsibilities, the parties will promptly do so.

### **SECTION 3. SCHEDULE**

The Task Force has submitted its most recent project schedule, a copy of which is attached marked "Attachment One." The parties encourage the Task Force to continue working diligently in order to achieve the progress outlined in the schedule.

### **SECTION 4. COMPONENTS OF OPERATIONAL AGREEMENTS**

The Task Force has held detailed discussions and has formulated preliminary recommendations on several aspects of the project's operations, as contemplated by Section 3 of the 2007 Agreement. These preliminary recommendations are tentative in that they do not presuppose the specific location or detailed configuration of the project, and in that they remain subject to environmental review, which could result in changes to the recommendations or even a decision or decisions by either the City or SqCWD to favor the No Project Alternative and thus choose not to pursue the project at all. However, the parties agree that the Task Force recommendations do provide useful guidelines for purposes of conducting environmental review and for evaluating the technical feasibility and fiscal impacts of the project.

The Task Force's seven recommendations, each accompanied by explanatory material, are endorsed by both parties in the form attached marked "Attachment Two." In terms of scheduling, the Task Force advises, and the parties tentatively agree, that, should both the City and SqCWD, after completing environmental review, choose to proceed with the project, an operational agreement incorporating these elements in final form should be adopted by the parties prior to advertising for bids for construction of the project.

The Task Force has indicated that recommendations addressing the contractual relationship between the parties and an on-going governance structure (also contemplated by Section 3 of the 2007 Agreement) will be submitted later, after further investigation and discussion.

IN WITNESS WHEREOF, the Parties have affixed their signatures hereto.

Approved as to form:

  
\_\_\_\_\_  
City Attorney

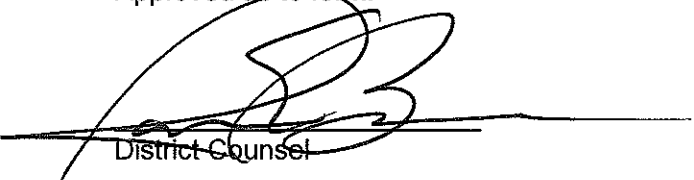
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**CITY OF SANTA CRUZ**

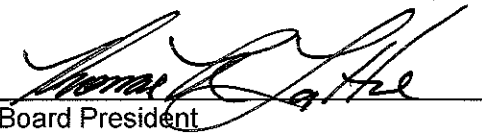
  
\_\_\_\_\_  
City Manager

3-29-10  
\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
District Counsel

**SOQUEL CREEK WATER DISTRICT**

  
\_\_\_\_\_  
Board President

4/6/10  
\_\_\_\_\_  
Date

Attachment 1 Desalination Program Schedule

	2009		2010				2011	2012	2013	2014	2015
	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4					
Pilot Plant (2005-2010)			Final Report								
Watershed Sanitary Survey (2007-2010)				Final Report							
Entrainment Study (2009-2010)					Final Report						
Offshore Geophysical Survey (2009)		Begin Field Work	Final Report								
Energy Plan (2009-2010)				Final Report							
EIR (2009-2012)			Begin Work					Complete Work			
Intake: Design (2010-2012)						Begin Work	Complete Work				
Intake: Construction (2013-2014)									Begin Work	Complete Work	
Full Scale Plant: Design (2010-2012)					Begin Work		Complete Work				
Full Scale Plant: Construction (2012-2015)									Begin Work	Complete Work	
Infrastructure: Design (2010-2011)						Begin Work	Complete Work				
Infrastructure: Construction (2013-2014)									Begin Work	Complete Work	

## ATTACHMENT TWO

### PRELIMINARY TASK FORCE RECOMMENDATIONS FOR ELEMENTS TO BE INCLUDED IN AN OPERATIONAL AGREEMENT

**1. Location.**

The desalination facility will be located in the CITY service area.

*Justification: the region's coastal infrastructure favors the CITY's service area in terms of placing the intake and outfall.*

**2. Delivery of actual produced water and blended system water.**

The project will utilize existing water infrastructure to the extent possible. As a result, water delivered to the SqCWD will include a blend of both actual produced water and CITY water from other sources, with the total amount nominally delivered not to exceed the desalination plant production.

*Justification: to minimize construction cost and the project's environmental footprint.*

**3. Production scheduling: priority system.**

Water produced by the Project will be allocated according to a monthly priority system. Table 1 shows the priorities in millions of gallons per day (mgd), calculated on a monthly basis. Plant capacity is 2.5 mgd. In all years, from May through October the City has a right to water produced at the desalination facility up to the plant capacity (2.5 mgd). The District has a right to take any remaining water. In April and November, both Agencies share an equal first priority of up to 1.25 mgd each, and an equal second priority of up to 1.25 mgd each. If the desalination facility is unable to fulfill the entire request in these months, the amount of water delivered to each agency will be reduced proportionately, first from the 2<sup>nd</sup> priority and then from the 1<sup>st</sup> priority. From December through March, the District has a right to water produced at the desalination facility up to plant capacity. The City has a right to any remaining water. If the amount ordered exceeds actual production or production capacity, orders will be filled in order of priority. The agencies will alert each other of their orders for the coming months on March 15 (for April through October) and October 15 (for November through March).

**Table 1: SCWD2 desalination plant (2.5 mgd capacity) production priority system (mgd)**

	January	February	March	April	May	June
<b>1st Priority Quantity</b>	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Shared: 1.25 each	Santa Cruz 2.5	Santa Cruz 2.5
<b>2nd Priority Quantity</b>	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Shared: 1.25 each	Soquel Creek 2.5	Soquel Creek 2.5
	July	August	September	October	November	December
<b>1st Priority Quantity</b>	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Santa Cruz 2.5	Shared: 1.25 each	Soquel Creek 2.5
<b>2nd Priority Quantity</b>	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Soquel Creek 2.5	Shared: 1.25 each	Santa Cruz 2.5

The priority system enables desalination plant output to be scaled back to standby mode when both parties deem it necessary. This is done when neither party requests water according to its priority.

*Justification: A priority system enables both parties far greater management flexibility in utilizing the desalination facility compared to a formulaic shortage trigger that would transfer desalination supply use from one party to another. The problem with a shortage trigger approach is that the complicated formulas required for the City to determine when it would take water are likely to deter the City from taking water at times when it would be prudent to do so, or to force the City to take water when conditions do not require it. To be unambiguous, a shortage trigger formula would have to be specified in immense detail, much of which cannot be known clearly in advance.*

*With a priority system, water is available to both parties in the quantities and at the times it is needed, as the parties have previously specified and which are consistent with each agency's long-term water supply modeling.*

**4. Capital cost allocation**

**A. Basic Principle**

The basic principle is that all capital costs of the 2.5 mgd project are to be shared on the basis of proportional maximum annual utilization. This approach utilizes the priority system to calculate the maximum possible annual utilization of the facility. Each agency's total annual first priority yield and second priority yield when first priority is less than plant capacity are summed, and divided by the facility's maximum annual yield. Capital costs are allocated to each agency based on the resulting percentages.

The calculation of proportional maximum annual utilization yields a capital cost allocation as follows:

Santa Cruz: 59%  
Soquel Creek: 41%

	<b>MGD</b>	<b>Days</b>	<b>Gallons</b>	<b>Guaranteed AF</b>	<b>Guaranteed Total AF</b>
<b>Santa Cruz</b>	2.50	184	460,000,000	1,412	1642
	1.25	60	75,000,000	230	
<b>Soquel Creek</b>	2.50	121	302,500,000	928	1158
	1.25	60	75,000,000	230	
<b>Total</b>		365	912,500,000	2,800	
	<b>Santa Cruz Proportion:</b>		0.59		
	<b>Soquel Creek Proportion:</b>		0.41		

**B. Capital Cost Categories**

The same recommended allocation formula will be applied to all capital costs directly associated with producing and delivering the supplemental water supply associated with the desalination project. Some refinements to the application of the basic principle to specific categories may be appropriate, as described below.

### Intake and Outfall

A decision has not yet been made regarding whether the intake will be open ocean utilizing an abandoned outfall pipe retrofitted with low-velocity manifolds or all new subsurface construction. If the outfall pipe is retrofitted for the desalination intake, it is assumed that it will be purchased or rented by scwd2. A decision has also not yet been made about whether the intake and outfall should be sized to accommodate the possibility of future expansion of the plant capacity. An independent valuation of the intake and outfall (and any other facility assets to be purchased or leased from one of the parties) will be made.

### Land

If one party chooses to purchase land in excess of what is available and needed for the plant, that party will pay the incremental cost of the additional land. An engineer will determine how much land is needed to operate the plant.

Land has a residual value that differs from the residual value of other capital costs. The implication is that either party should be compensated if the other party some day puts some or all of the land purchased for this project to other uses. If and when the land is no longer used for desalination or all or a portion of the land is put to a different beneficial use or sold by one of the parties, the other party will be paid its original proportion paid of the appraised value of the land or that portion not used for the desalination project at the time the use changes or the land is sold.

### Desalination Plant

The costs of pretreatment, treatment, and buffering (if necessary) facilities will be considered a single cost.

### Piping from Desalination Plant to City System, and from City System to Soquel Creek System

These piping costs are part of the project and subject to the 59-41 capital cost split. The City would be responsible for the cost of constructing or enlarging components of the project to accommodate future expansion of the project's capacity above 2.5 mgd.

*Justification: (i) Partnership - The two agencies are partners which independently arrived at the value of a desalination project to their systems based on long-term planning. Both agencies independently studied the potential for desalination, but were aware that the other agency was also considering desalination. One implication of the partnership principle is that the infrastructure costs of wheeling the desalinated water through one system to the other is part of the overall cost of the project. . Additional costs to accommodate increased capacity to support the desalination project, including any piping and pumping infrastructure from the DeLaveaga storage tanks to the SqCWD boundary are to be shared.*

*(ii) Systems are in Good Operating Condition - Keeping the infrastructure of each system up to standard is the responsibility of each individual agency*

## **5. Operating Costs Allocation.**

There are three categories of operating costs: fixed readiness charge (allocated the same as capital costs, 59/41); water charge (allocated as each agency's share of total orders); and capital refurbishment charges (allocated the same as capital costs, 59/41). Examples of each category, based on discussions with other water agencies, consulting engineers, and staff, follow. This list may be modified over time and is not intended to be all-inclusive

Fixed Readiness Cost Categories (R) activities or items that must be maintained regardless of whether the plant is operating so as to "stand ready" to produce water

Brine Equalization Tank  
Brine Pipeline maintenance  
Standby Engine Generator System  
Operations Building System  
Plant SCADA Systems  
Plant Electrical System  
Plant Security and Landscape  
Intake Screens and Pipeline  
Intake Pump Station (parts subject to constant corrosion)  
Source Water Pipeline  
Rapid Mix (parts subject to corrosion)  
High-Rate Clarification  
Permeate Tank  
Chlorine Contact Tank  
Brine Pump Station (parts subject to constant corrosion)  
Water quality testing  
Labor for stand-by operations

Water Charge Categories (W) items or activities directly related the amount of water produced  
Power

Intake pump stations (parts degraded by use)  
Rapid Mix (parts degraded by use)  
Strainers and MF/UF Membrane Filters, or media replacement  
Filtrate and Backwash Supply Tank  
SWRO Feed Pump Station  
1st pass SWRO membrane elements  
Distribution Booster Pumps  
Liquid Chemical Storage and Feed  
Dry Chemical Storage and Feed  
Carbon Dioxide Storage and Feed  
Backwash Supply Pump Station  
Backwash Equalization Basin  
Gravity Thickeners  
Centrifuges  
Brine Pump Station (parts subject to degradation by use)  
Labor for in-use operations  
Additional water quality tests

Capital Refurbishment Categories (C) generally longer term maintenance and replacement of components to maintain the facilities in useful condition for the life of the plant

Building  
Piping  
Valves  
RO element pressure vessels  
Equipment for changing, removing, replacing RO elements in pressure vessels  
Measurement instruments  
SCADA systems  
Chemical cleaning systems  
Intake and outfall equipment (alternative location to the above two categories)

Power equipment (on-site generators, transformers)  
 Energy recovery devices  
 Screens

Calculations of operating costs are as follows:

	Col. 1 Fixed Readiness Charge (R)	Col. 2 Water Charge (W)	Col. 3 Capital Refurbishment (C)
City	% of plant capacity	% of total orders	% of plant capacity
SqCWD	% of plant capacity	% of total orders	% of plant capacity

Note: the "% of plant capacity" for each agency is SqCWD: 41%, City: 59%

Scenario 1:

*Plant operates normally*

SqCWD pays:  $(.41*(R+C)) + (\text{SqCWD proportion of water orders} * W)$

City pays:  $(.59* (R+C)) + (\text{City proportion of water orders} * W)$

Scenario 2:

*Plant does not produce sufficient water to meet orders*

SqCWD pays:  $(.41*(R+C)) + (\text{SqCWD proportion of water taken} * W)$

City pays:  $(.59* (R+C)) + (\text{City proportion of water taken} * W)$

Many of these categories are already being tracked by the City Water Department cost tracking system. As the time of plant operation nears, these categories can be identified in or added to the existing accounting system.

An adjustment charge for normal system leakage/losses of 1.5% of deliveries will be added to the water charge paid by the Soquel Creek Water District.

Incidental overproduction. In the event that the facility occasionally or for short durations overproduces water as a result of operating conditions, and the over production exceeds ordered water, the cost of its production will be added to the cost of the ordered water, in proportion to the amounts ordered.

*Justification: To the extent possible, the direct beneficiary should cover operating costs of the plant. In some cases, operating costs are not linked to water produced, and are appropriately allocated on the same basis as are capital costs.*

## 6. Emergencies- Principles and Procedures

### "Emergency Call for Desalinated Water"

An Emergency Call for Desalinated Water can be made as a result of an incident that suddenly and unexpectedly curtails water supply for either agency. Emergencies are curtailment events whose details, timing, and severity cannot reasonably be anticipated by water managers. Examples include seismic damage to facilities, unexpected loss of multiple wells, treatment plant breakdowns, damage to reservoirs, and other similar impacts that cause immediate and unexpected loss of water supply. Emergencies do not include droughts, water shortages due to growth, or other changes in demand or supply that should be subject to regular water supply planning.

Concurrent with such an incident, either or both agencies may issue an Emergency Call for Desalinated Water. An Emergency Call for Desalinated Water triggers the following provisions. It does not trigger any other emergency-related actions or responses at or between the Agencies unless such actions or responses are specified in other documents.

#### Single-agency Emergency

An Emergency Call for Desalinated Water occurs when one Agency Manager delivers a written communication to the other requesting emergency use of the desalination facility. The timing of the event begins upon delivery of the communication either electronically or in hard copy.

The Agency Manager of the declaring agency has the authority to implement immediate changes to the priority system.

Having made an Emergency Call for Desalinated Water, the declaring agency may request up to the entire output of the desalination plant for a period of up to 15 days from the day of declaration. This request will be honored by the other agency.

During this period, the Emergency Call for Desalinated Water allocation replaces the priority system. At any time, the Agency Manager of the declaring Agency may end the Emergency Call for Desalinated Water, at which point desalinated water is again allocated according to the priority system.

After 15 days of continuous Emergency Call for Desalinated Water, the priority system will be reestablished and followed for allocation of desalinated water unless the Agency Managers jointly declare an Ongoing Emergency.

During an Ongoing Emergency allocation of desalinated water will be subject to negotiation and agreement between the two agencies.

Agency Managers will meet prior to the conclusion of the initial 15-day emergency period to discuss whether to end or continue the Emergency Call for Desalinated Water. If they agree to continue it by declaring an Ongoing Emergency, they will then agree on an allocation of water from the facility. The continuation can last up to 15 days without repeating this process.

In the event that the Agency Managers cannot agree on whether to continue the Emergency Call for Desalinated Water, the issue will be resolved through arbitration as provided in Section 7.

Operating expenses during the emergency will be allocated according to the proportion of water delivered to each agency during that period.

#### Regional Emergency

Both parties may make an Emergency Call for Desalinated Water at the same time or in overlapping periods.

If this occurs, the Agency Managers will attempt to negotiate an allocation of water from the Desalination Facility. This allocation will replace the regular priority system detailed in this agreement. If the Agency Managers are not able to reach an agreement, the issue will be resolved through Arbitration.

*Justification: In case either agency or both agencies experience an unexpected severe shortage of water supply, the desalination facility provides an opportunity to meet short-term supply needs. These incidents are expected to occur rarely and are expected to last from a few days to*

*one week but could last longer. The following two principles influence the utilization of desalination water during an emergency.*

- (1) *In the event of an emergency, each agency will retain its independence of action subject to any agreements the agencies have reached in advance.*
- (2) *In the event of an emergency that impacts both agencies, a principle of equity will be used in discussions over water curtailments.*

## **7. Arbitration Procedures for Disputes Over Allocation of Water in Emergencies.**

In the case of emergencies, a simple, clear and speedy procedure is needed to allocate water from the desalination plant. Mandatory, binding arbitration conducted by a single, technically-knowledgeable arbitrator is most likely to meet that objective. To accomplish that, the Task Force recommends the following:

### Panel of Arbitrators

The parties will establish by agreement a panel of neutral third parties who are acceptable to both as potential arbitrators. Experience and qualifications desirable for potential arbitrators include experience in civil engineering and/or municipal water supply management and operation. To be eligible for inclusion on the panel, a person must not be an employee of or consultant to either of the parties or have served in that capacity for a period of time agreed to by the parties. Also, potential arbitrators must agree in advance on dates of availability, compensation, the need for quick action and decision, as well as on procedural rules the parties may have established.

The parties will keep the list of potential arbitrators up-to-date.

### Selection of Arbitrator

The arbitrator may be any person on the approved list who is immediately available to serve.

### Process of Arbitration

The process should be efficient, informal and fair. Basic groundrules will include:

- prohibitions on individual contacts by either party with the arbitrator (other than to explain the nature of the decision and establish meeting logistics);
- providing a copy of all information submitted to the arbitrator to the other party;
- time limits for submission of written information to the arbitrator, for meetings to present information and argument to the arbitrator, and for the issuance of the arbitrator's decision;
- the scope of the arbitrator's decision and the length of time it can be in effect.

### Finality

The parties agree that the arbitrator's decision will be final and not subject to review in court.

*Justification: The parties should establish in advance a procedure for prompt resolution of any dispute about the existence of an emergency and the reallocation of the output of the project by a knowledgeable, independent third party.*

**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. **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, 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 investigative studies, design, environmental review, and permitting associated with 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 have affixed their signatures hereto.

**CITY OF SANTA CRUZ**

Emily Kelly  
Mayor

23 Sept 07  
Date

Mark B.  
Asst City Manager

9-21-07  
Date

Approved as to form

[Signature]  
City Attorney

**SOQUEL CREEK WATER DISTRICT**

Bruce Daniels  
Board President

9-19-2007  
Date