



**STANISLAUS REGIONAL WATER AUTHORITY**

P.O. Box 642, Modesto, CA 95353  
(209) 577-5213 FAX (209) 577-5477

## **Board Meeting Agenda**

**September 24, 2015**

**10:00 a.m.**

**2<sup>nd</sup> Floor – Room 2001**

**1010 Tenth Street, Modesto CA**

Chair  
**Chris Vierra**

Vice Chair  
**Gary Soiseth**

Director  
**Bill Zoslocki**

Interim General Manager  
**Steve Stroud**

Board Secretary  
**Judy Rosa / Jennifer Land**

Interim Legal Counsel  
**Phaedra A. Norton**

**NOTICE REGARDING NON-ENGLISH SPEAKERS:** The Stanislaus Regional Water Authority (SRWA) meetings are conducted in English and translation to other languages is not provided. Please make arrangements for an interpreter if necessary.

**EQUAL ACCESS POLICY:** If you have a disability which affects your access to public facilities or services, please contact the Board Secretary. The Board is committed to taking all reasonable measures to provide access to its facilities and services. Please allow sufficient time for the Board to process and respond to your request.

**NOTICE:** Pursuant to California Government Code Section 54954.3, any member of the public may directly address the Stanislaus Regional Water Authority Board on any item appearing on the agenda, including Consent Calendar and Scheduled items, before or during the Board's consideration of the item.

**AGENDA PACKETS:** Prior to the Stanislaus Regional Water Authority Board meeting, a complete Agenda Packet is available for review on the SRWA's website at [www.stanrwa.org](http://www.stanrwa.org) and in the Board Secretary's Office at 156 S. Broadway, Suite 230, Turlock, during normal business hours. Materials related to an item on this Agenda submitted to the Board after distribution of the Agenda Packet are also available for public inspection in the Board Secretary's Office. Such documents may be available on the SRWA's website subject to staff's ability to post the documents before the meeting.

1. **A. CALL TO ORDER**
  
2. **PROCLAMATIONS, RECOGNITIONS, APPOINTMENTS, ANNOUNCEMENTS & PRESENTATIONS:** None
  
3. **A. SPECIAL BRIEFINGS:** None
  - B. STAFF UPDATES**
    1. Interim General Manager's Report (*Cooke*)
    2. Finance Director's Report (*Genereux*)

**C. PUBLIC PARTICIPATION**

This is the time set aside for members of the public to directly address the Stanislaus Regional Water Authority Board on any item of interest to the public that is within the subject matter jurisdiction of the SRWA and to address the Board on any item on the agenda, including Consent Calendar items. You will be allowed five (5) minutes for your comments. If you wish to speak regarding an item on the agenda, you may be asked to defer your remarks until the Board addresses the matter.

No action or discussion may be undertaken on any item not appearing on the posted agenda, except that the Board may refer the matter to staff or request it be placed on a future agenda.

**4. DECLARATION OF CONFLICTS OF INTEREST AND DISQUALIFICATIONS**

**5. CONSENT CALENDAR**

Information concerning the consent items listed hereinbelow has been forwarded to each Board member prior to this meeting for study. Unless the Chair, a Board member or member of the audience has questions concerning the Consent Calendar, the items are approved at one time by the Board. The action taken by the Board in approving the consent items is set forth in the explanation of the individual items.

- A. *Motion:* Accepting minutes of Regular Meeting of August 27, 2015 and Special Meeting of September 3, 2015

**6. PUBLIC HEARINGS: None**

**7. SCHEDULED MATTERS**

- A. Request to approve an agreement between the City of Turlock and the Stanislaus Regional Water Authority (SRWA) for interim legal services and authorizing the Board Chair to execute said agreement. (*Cooke*)

***Recommended Action:***

*Motion:* Approving an agreement between the City of Turlock and the Stanislaus Regional Water Authority (SRWA) for interim legal services and authorizing the Board Chair to execute said agreement.

- B. Request to approve the Electronic Transmittal Authorization Form and authorizing the Board Secretary to obtain a completed authorization form from each current and future Director. (*Cooke*)

***Recommended Action:***

*Motion:* Approving the Electronic Transmittal Authorization Form and authorizing the Board Secretary to obtain a completed authorization form from each current and future Director.

- C. Review the SRWA Bylaws and Joint Powers Authority Agreement and provide direction to staff regarding any recommended changes. (*Cooke*)

***Recommended Action:***

None – discussion item only.

**8. MATTERS TOO LATE FOR THE AGENDA**

**9. BOARD ITEMS FOR FUTURE CONSIDERATION**

**10. BOARD COMMENTS**

Board members may provide a brief report on notable topics of interest. The Brown Act does not allow discussion or action by the legislative body.

**11. NEXT MEETING DATE: October 22, 2015**

**12. CLOSED SESSION: None**

**13. ADJOURNMENT**



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**DATE:** September 24, 2015

**TO:** SRWA Board

**FROM:** Steve Stroud, Interim General Manager

**SUBJECT:** General Manager's Report

I am pleased to present the General Manager's Report to keep the SRWA Board informed of SRWA activities and progress in key areas. This report will be posted on the SRWA website to facilitate public access.

NOTE: As discussed at a Board meeting last month, I will not be able to attend the Sept. 24, 2015 Board meeting, so Michael Cooke will fill in. He will address any questions or concerns you may have.

## **Technical Advisory Committee (TAC) Activities**

TAC met in Modesto on September 10, 2015. All SRWA member agencies were represented and key SRWA staff was present at the meeting. The primary focus of the meeting was developing the Project schedule and CEQA RFP, which the Board identified as the two top priority issues. Also addressed:

1. Interim General Counsel, will draft letter seeking other agency interest (Hughson, Denair, Hilmar, Keyes, and Delhi) in joining the SRWA Project, secure TAC feedback, and then seek the Board Chair's perspective. The request will have much more weight if it comes from the SRWA Board.
2. Ceres and Turlock will complete CEQA on their respective terminal tanks and downstream facilities.
3. Modesto wants SRWA to complete CEQA on its terminal tank, as part of the Project CEQA. Modesto will complete CEQA on its downstream facilities.
4. The preferred joint site for Ceres and Modesto terminal tanks has been purchased by Gallo, so the site is no longer feasible. A new tanks site (or sites) must be selected. The location of Ceres' terminal tank and transmission pipeline will hinge on where Modesto puts its terminal tank.
5. At its Sept. 10<sup>th</sup> meeting, TAC agreed to ignore, for now, any CEQA required for facilities needed to meet the Offset Water commitment in TID/SRWA Water Supply Agreement.



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- a. Since that date, there has been some change of thinking on this issue. TAC will address this issue on Monday, Sept. 21<sup>st</sup>, which is too late to include here.
  - b. Michael Cooke will provide an update on any changes in TAC recommendations at the Board meeting.
6. Send CEQA RFP only to Horizon and ESA. [Note: City of Modesto procedure names 10 specific short-list CEQA consultants.]
7. Awarding a CEQA contract will require:
  - a. Board action on a budget amendment appropriating funding.
  - b. An amendment to Section XV.B of the Joint Exercise of Powers Agreement (JPA) between Ceres, Modesto, and Turlock, dated Sept. 27, 2011, will be needed to authorize Finance Director to deviate from the Appendix A ("Phase 1") Cost Allocation to pay for studies (and, later, construction) of facilities that are not uniformly beneficial to all three cities (i.e. terminal tank CEQA for Modesto).
8. Mike Cooke will fill in for Interim GM at the Board meeting on 9/24/15.
9. CEQA RFP to review adequacy of existing CEQA on TID's district delivery facilities (DDF). If additional work is needed, TID will decide how best to proceed. A cost sharing agreement will be needed for any additional studies.
10. CEQA RFP will address environmental effects of cleaning and testing the existing infiltration gallery.
11. The DDF should be built sooner, rather than later, as it may be important in coping with fish flow requirements and the drought. Will be needed before water plant process testing begins.
12. Horizon Environmental recommended a New Comprehensive EIR (Final Tech Memorandum, August 8, 2013), but TAC recommends the Subsequent EIR option to build on environmental review work already completed.
  - a. Since the Sept. 10<sup>th</sup> TAC meeting, there has been some change of thinking on this issue. TAC will address this issue on Monday, Sept. 21<sup>st</sup>, which is too late to include here.
  - b. Michael Cooke will provide an update on any changes in TAC recommendations.



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13. CEQA RFP should proceed immediately, but provide an option to permit Modesto to drop out of the Project - and must address the impacts if they do so.
14. TID does not yet have a team assembled, but will look at when it is best to apply for the water rights changes needed (long-term transfer). This may impact the current schedule.
15. IGM drafted CEQA RFP, incorporating 9/10/15 consensus items, and sent the draft to the email group on Monday, Sept. 14, 2015.
16. TAC is scheduled to meet at 3:00 pm Monday, Sept. 21, 2015 to hash out any final changes to the draft CEQA RFP.
17. Projected RFP Schedule (subject to adjustment at TAC's 9/21 meeting).
  - a. Issue RFP Wednesday, Sep. 23, 2015
  - b. Proposals due Thursday, Oct. 8, 2015
  - c. Interviews (if needed) Week of Oct. 12, 2015
  - d. SRWA Board award Thursday, Oct. 22, 2015
  - e. Consultant begins work November 1, 2015

## **Financial**

No significant changes during this period.

## **Professional Services**

No consulting services during this period.

## **Turlock Irrigation District Update**

No significant changes during this period.

## **Oakdale Irrigation District**

No new information.

## **Public Outreach Activities**

Aside from normal postings on the SRWA website, there was no activity during this reporting period.

## **Legislative & Regulatory Update**

No Legislative activity during this reporting period.

## **Other Topics**

None.



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**DATE:** September 21, 2015  
**TO:** SRWA Board  
**FROM:** Gloriette Genereux, Finance Director  
**SUBJECT:** Finance Director's Quarterly Report

The purpose of the monthly Finance Director's report is to keep the SRWA Governing Board fully informed of SRWA financial activities. This reporting period covers a portion of the 1<sup>st</sup> quarter of fiscal year 2016.

**JPA - Stanislaus Regional Water Authority  
Fund Operating Revenues and Expenses  
Fiscal Year 2015-2016**

Revenue	Sep-15 Qtr.1	Dec-15 Qtr.2	Mar-16 Qtr.3	Jun-16 Qtr.4	YTD	Budget
City of Ceres (22%)	\$ 2,567	\$ -	\$ -	\$ -	\$ -	\$ 2,567
City of Modesto (22%)	\$ 2,567	\$ -	\$ -	\$ -	\$ -	\$ 2,567
City of Turlock (56%)	\$ 6,535	\$ -	\$ -	\$ -	\$ -	\$ 6,535
<b>Total Revenue</b>	<b>\$ 11,670</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,670</b>
<b>Expense</b>	<b>Sep-15 Qtr.1</b>	<b>Dec-15 Qtr.2</b>	<b>Mar-16 Qtr.3</b>	<b>Jun-16 Qtr.4</b>	<b>YTD</b>	<b>Budget</b>
Legal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,000
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 200
Training Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000
Business Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500
Professional Services	\$ 4,542	\$ -	\$ -	\$ -	\$ 4,542	\$ 83,572
ISF - Mail Services - Inside	\$ 8	\$ -	\$ -	\$ -	\$ 8	\$ 30
City of Modesto Services	\$ 7,121	\$ -	\$ -	\$ -	\$ 7,121	\$ 31,976
<b>Total Expenses</b>	<b>\$ 11,670</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 11,670</b>	<b>\$ 126,278</b>

\*Costs thru 09/20/15





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## SRWA Governing Board Meeting Minutes

August 27, 2015

The Stanislaus Regional Water Authority (SRWA) Governing Board met on August 27, 2015, at the City of Modesto, 1010 10<sup>th</sup> Street, 2<sup>nd</sup> Floor Conference Room 2001, Modesto, California.

Directors Present: Chris Vierra (Ceres), Bill Zoslocki (Modesto), Gary Soiseth (Turlock)  
Staff Present: SRWA: Steve Stroud, Gloriette Genereux, Judy Rosa  
Ceres: Michael Brinton, Toby Wells, Daryl Jordan  
Modesto: Larry Parlin, Will Wong, Thomas Hedegard, Leslie Vaughn  
Turlock: Roy Wasden, Michael Cooke, Garner Reynolds  
Others Present: RMC – Allison Martin, Carrie Del Boccio, Rachel Gross, AECOM – Andrea Shephard

- I. Call to Order - The meeting was called to order at 10:18 a.m.
- II. Public Comments – None
- III. Consent Calendar
  - a. Approval of Minutes – It was moved to approve by Vice Chair Gary Soiseth, seconded by Director Bill Zoslocki, and carried unanimously to approve the minutes of the July 16, 2015 Special Board meeting and the July 23, 2015 Board Meeting.
- IV. General Manager's Report – The General Manager commented about the resignation of the SRWA Secretary and training needed regarding the City of Modesto accounting system for SRWA budgeting.
- V. Finance Director's Report – Thomas Hedegard reported on 1<sup>st</sup> quarter of FY 2015/16.
- VI. Written Communications
  - a. SRWA Secretary Resignation – Chair Vierra thanked Judy for her services to the SRWA, then opened it up for discussion on replacement of her position. Vice Chair Soiseth suggested that the replacement of this position be placed on the next agenda for discussion and action.
- VII. Unfinished Business - None
- VIII. New Business
  - a. Next Steps – Steve stated CEQA needs to be completed on items that it hasn't been done on, and updated on what has been done. He also stated that TID needs a change in its permit to allow urban uses and a different place of use from agriculture to urban. The State Board will accept an application, but won't process it until CEQA has been completed. Once CEQA and the permit changes are completed, we will have a project. The Technical Advisory Committee recommends a Design-Build (DB) instead of the typical public agency process of Design-Bid-Build (DBB). Chair Vierra stated that the environmental (CEQA) work needs to be started immediately, and the decision on DB or DBB can be determined later on. The Board would like to get an environmental consultant on board as quickly as



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possible, and would also like to receive a project schedule in a Gantt chart format at the next meeting.

- IX. Matters Too Late for the Agenda – None
- X. Board Comments – None
- XI. Items for September 24, 2015 Agenda – Vice Chair Soiseth stated he would provide to the Chair any items for the next meeting agenda prior to the 72-hour rule posting.
- XII. Adjournment – The meeting adjourned at 10:34 a.m. to Closed Session

Report out of Closed Session:

The Board unanimously voted to release the General Counsel.

The Board will call a Special Meeting for September 3, 2015 at 10 a.m. at 1010 Tenth Street in Modesto, California. The purpose of the Special Meeting will be to meet in Closed Session to discuss the appointment of an Interim General Counsel. The Special Meeting Notice will be posted and made available as required by the Brown Act.



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## SRWA Governing Board Special Meeting Minutes

September 3, 2015

The Stanislaus Regional Water Authority (SRWA) Governing Board held a special meeting on September 3, 2015, at City of Modesto, 1010 10<sup>th</sup> Street, 2<sup>nd</sup> Floor Conference Room 2001, Modesto, California.

Directors Present: Chris Vierra (Ceres), Bill Zoslocki (Modesto), Gary Soiseth (Turlock)  
Staff Present: SRWA: Steve Stroud, Judy Rosa  
Ceres: Michael Brinton  
Modesto: Larry Parlin, Adam Lindgren, DeAnna Espinoza, Leslie Vaughn  
Turlock: Michael Cooke, Garner Reynolds, Roy Wasden, Phaedra Norton

- I. Call to Order - The special Board meeting was called to order at 10:04 a.m.
- II. Public Comments – None
- III. Unfinished Business
  - a. Exercise the right to discharge Davidovitz and Bennett pursuant to paragraph 6 of the Services Agreement between the Stanislaus Regional Water Authority and Davidovitz and Bennett. Authorize the Chair to take any and all action necessary to discharge Davidovitz and Bennett including, but not limited to, providing Davidovitz and Bennett with thirty days written notice of discharge pursuant to paragraph 6 of the Services Agreement. – Director Zoslocki stated that an email was received from Davidovitz and Bennett resigning as the SRWA’s legal counsel effective August 26, 2015. The email was sent directly to the Chair, with copy to Larry Parlin.

Adam Lindgren, City of Modesto City Attorney, advised the Board that he had been asked by Director Zoslocki to provide information to the Board regarding the release of General Counsel at the August 27, 2015 Board Meeting. He stated that it is very rare, even after a terrible performance evaluation, that the Board almost immediately posted the notice about the termination of the public employee. The more common practice is that the Board Chair will offer, on behalf of the Board, the public employee a chance to resign. He stated that the Board should discuss items for the next agenda at the prior meeting to be more effective.

Mr. Lindgren stated that his understanding was that Director Zoslocki was surprised that the item was added by a single member of the Board or to the Chair to consider the possible termination of the employee. Director Zoslocki felt there should have been prior discussion before this item was agendaized.

Mr. Lindgren, speaking for the City of Modesto and the Mayor, stated Modesto has no issue with the substance of the Board’s decision. However, Mr. Stevens was a 25-year City employee, and believe that employee and previous employees of the City should be treated with the highest norms of professional treatment among cities. He recommends the Board hire fully independent and highly competent outside counsel that is independent of the three cities represented on the Board.



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Director Zoslocki stated he downloaded his agenda and it did not have the updated agenda, it just had a review of both parties. He stated he fully supports hiring independent counsel.

Chair Vierra stated he appreciated these comments and clarified that the wording was not to terminate, but to have the ability to terminate. And the vote was unanimously to terminate Mr. Stevens' services with the SRWA. He stated that the Board needs to be working on providing surface water to its residents, and not focused on the idea that the Board doesn't have representation. He also stated that the agendas will go out to make sure that all the members have the most up to date information and be posted.

Vice Chair Soiseth stated he was the person that added it to the agenda to prevent any more delays. He also stated that he was frustrated that the email only went to the Chair and the City of Modesto staff, not the City of Turlock or the City of Ceres staff. He conferred with his City Attorney to make certain that the wording was correct and that the posting met the 72 hours deadline. He requested of the Chair, which is 2/3 of the Board, and there was consent to place the item on the agenda. He also stated that it was up to staff to make sure all the Board members received the updated agenda. He also stated that he believes this is a distraction that it is preventing the Board from moving forward and progressing.

Chair Vierra stated he still has not seen the resignation from Davidovitz and Bennett and he asked the other Board members whether they wanted to make any changes to the previous decision of the Board. Vice Chair Soiseth stated that since he hadn't seen the resignation email, he wanted to move forward because the Board has a lot of big issues going forward and legal representation is needed, and since the resignation letter was not in front of the Board, Vice Chair Soiseth stated he agreed that the Board should execute Agenda Item III.a. He also wanted to know if the SRWA has 30 days of legal representation or not. This item was to be continued after III.b. while a copy of the resignation email was provided to the Board for its review.

- b. Interim General Manager to provide a detailed timeline for the Surface Water Project with associated benchmarks that identifies action items that are necessary/critical for the project's completion. – Board Chair stated the Board had before them a project schedule prepared by Interim General Manager (IGM) Steve Stroud for the Board's review. Chair Vierra commended Mr. Stroud for the work done on the schedule. Mr. Stroud explained that the City and TID will have to do separate CEQA, per the Water Sales Agreement. He also stated that the SRWA TAC meeting is scheduled for 9/10 and a subsequent meeting will follow with TID to discuss CEQA needs. He stated this project report shows what needs to be done, and it hasn't been vetted out with TAC or TID.

Chair Vierra asked about Item 17- Needs Assessment for Modesto only. Larry Parlin explained that Modesto is in the process of its Water Master Plan, and within 60 days Modesto should know if this project is still attractive for the City of Modesto rate payers.



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Chair Vierra asked and Larry Parlin confirmed that there is a possibility that Modesto may not need the water. Chair Vierra also asked the IGM if there was a contingency plan in place should Modesto back out. Mr. Stroud stated there would need to be an amendment to the Bylaws to reflect a majority vote.

Chair Vierra stated that he was frustrated because he thought we had already covered who was going to be part of the project in the previous years. With Modesto now deciding it might not be in, this could delay moving forward, and the Board will need to look at other options. He stated the Board needs to know as soon as possible whether Modesto is in or out, as this will have a huge impact on his ratepayers and others. Vice Chair Soiseth stated he was in agreement.

Larry Parlin responded stating that the water situation has dramatically changed in the last few years, and decisions made for this project have change going forward. He believes that Modesto is being proactive by doing a master plan now to really see what the water needs are, and parts of Ceres are part of this master planning effort. He stated the growth projections are completely different and former master plans and general plans are no longer valid. He stated Modesto needs to make sure it can afford the project, as rates will already be increasing significantly. Also, are the rate payers going to be able to afford more, and does Modesto need the project?

Chair Vierra asked whether in the CEQA work we have to know the size of the facility, and Mr. Stroud confirmed that we do. Chair Vierra also stated that if the size decreases, this should not be a problem.

Director Zoslocki stated that Modesto's information is fairly new, and with Phase 2 MID plant coming online, along with the mandates from the state we suspect are coming down, it's really a gray area. He stated for planning purposes that we move forward with Modesto as a partner in the project until the water needs are known.

Larry Parlin added that we are making assumptions to go forward with this project right now, and we are verifying that these assumptions are still valid. We have a stranded asset now with MID, a 60 mgd treatment plant and we are only getting 11 mgd delivered right now. We have an obligation to our ratepayers not to go down that path again. We have to verify that.

Chair Vierra stated he fully understood Modesto's concerns; however, Ceres and Turlock are now waiting on Modesto to see whether they are in or out to be able to move forward. We need to determine who's in and who's out because if one jurisdiction is out, the others will need to shuffle and do things differently.

Larry Parlin stated that he doesn't believe Modesto's analysis will delay what is shown on the schedule for the next three months. He stated he will commit to expedite Modesto's demand analysis conclusion to help out. He also stated that



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once the analysis is done, it will need to go to Modesto's Council for them to decide if they want to stay in this project.

Vice Chair Soiseth asked if there was a reason the master plan hadn't started previously so that Modesto would have known prior to negotiating the Water Sales Agreement with TID, whether it was in or out? Mr. Parlin stated the master plan started about six months ago and didn't specifically address SRWA, its focus is on the entire Modesto system and the following:

- changing conditions
- agreements with MID
- water conservation
- growth and the fact that the voters may put a wall around Modesto to stop urban sprawl

Mr. Parlin also stated that SRWA plays a very small part related to Modesto's overall water picture. All previous assumptions are incorrect, and everything has changed dramatically.

The Chair and Vice Chair shared their equal frustration with not knowing this information earlier, as their jurisdictions will be affected should Modesto pull out. Director Zoslocki reiterated that this was new information for Modesto and they didn't know enough about the data being collected to comment prior to the execution of the Water Sales Agreement with TID.

Vice Chair Soiseth suggested meeting every two weeks to keep the momentum going; however, no decision was made to do that at this point.

There was continued discussion about this subject and it was determined that other jurisdictions should be asked one more time to see if any others would like to be part of this JPA. Chair Vierra gave direction to the IGM to have the TAC contact the previous jurisdictions to see if there is any interest, as well as Stanislaus County. This would also include the need to change the Bylaws to a majority vote.

Continued Discussion on item III.a.

Vice Chair Soiseth asked that now Turlock's City Attorney has arrived, that Mr. Lindgren please repeat his concerns about the posting of the 8/27/15 updated agenda and the verbiage related to the dismissal of the General Counsel. Mr. Lindgren repeated that he was at the meeting at the request of Director Zoslocki to talk about the process of terminating a senior public employee. He stated that usually Boards and Councils went into Closed Session to conduct a performance evaluation, and if the conclusion of that performance evaluation was very negative, they would direct the Chair or the General Manager or the General Counsel to go to the employee that the evaluation was done on, and advise them that they received a very negative evaluation and give them an opportunity to resign. If they didn't, the Board would likely take future discussions about ending the relationship. Mr. Lindgren stated that Mr. Zoslocki commented that that opportunity didn't appear to be afforded to Davidovitz, and he also stated under the Brown Act where the Board is addressing serious matters, whether they be the



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matters of scheduling or the substance of key work that is being done, or whether it be sensitive personnel matters, that it may be a better practice for this body and other JPAs to advise each other at the end of the meeting if there are major items that you expect to add to the next agenda, whether in open session or at the end at the closed session, rather than to add them between meetings because the placing of this item came as a surprise to Mr. Zoslocki.

Vice Chair Soiseth said that at the prior meeting when the review was scheduled, he had reserved the right to clarify the language because he needed to consult with Turlock's City Attorney for the correct language to use. The language said discipline/dismissal/ release allowing the Board to move forward instead of just evaluating the performance. He stated that General Counsel Stevens didn't show up for the last meeting, he had to be called to come down for his review, and Mr. Stevens asserted that he was told not to show up by Mr. Lindgren. Mr. Lindgren stated that was incorrect. Vice Chair Soiseth listed the concerns regarding Mr. Stevens representation for the SRWA and lack thereof, and not attending today's meeting or having representation from Davidovitz. Then an email from Davidovitz that was just sent to the Modesto City Attorney, Mr. Parlin, and the Board Chair (who acknowledged it just came through in his email but was sent at 9:30) affords the SRWA with no legal representation at this point, even though the Agreement reads 30 days after notice of termination.

Mr. Lindgren stated that he did speak with Mr. Stevens the previous night and advised him about standard practices should he decide not to attend the meeting today, and one recommendation was to send an email to the Board Chair resigning from the position. He agreed with the Board that they have more important thing to address, and believe that Director Zoslocki is not here to hinder progress.

Director Zoslocki stated that looking at his electronic copy of the Closed Session agenda item didn't show the updated verbiage that was added and posted within 72 hours of the meeting of 8/27/15. He stated he should be getting the same information as everyone else. Vice Chair Soiseth pulled up the SRWA website to show that the correct agenda was on the website.

SRWA Secretary Rosa explained that she was on vacation when the request came to update the agenda for posting was made, and prior to her leaving she had the original agenda posted. She stated she did check her City email, and had a staff member post the agenda; however, she was the only one that posts to the website and that did not happen prior to the 8/27/15 meeting.

Director Zoslocki stated there was no Brown Act violation. The problem was he just didn't get the information and was surprised. Vice Chair Soiseth agreed that there was no Brown Act violation and that the SRWA has been given misinformation these last few months, a lot of it central to Mr. Stevens, and the way the item was proposed to the Chair and the way the Chair responded was correct. Mr. Lindgren stated that the email in front of the Board is the willingness of your General Counsel to resign.



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Turlock City Attorney Phaedra Norton asked if the email resignation was being taken under Matters Too Late for the Agenda. One of her concerns was after the posting of the agenda there is no need to take immediate action on the resignation. Both attorneys were in agreement that the agenda item before them they could take action on the resignation email. She reiterated that they posted the agenda in accordance with the Brown Act, and confirmed the frustration with the lack of information provided to all the Board members.

Mr. Lindgren stated that he wasn't stating the Board did anything illegal, that's not what he was saying. He said that his firm represented approximately 40 cities and the norm that he sees that most agencies don't jump to termination. He advised that it was up to the Board how they want to treat its employees, and how you treat employees of the City of Modesto.

Chair Vierra asked Mr. Lindgren if he was the City of Modesto's City Attorney or a contract employee. Mr. Lindgren confirmed he was the City of Modesto's City Attorney by contract with his law firm that is not Davidovitz and Bennett. He stated that he was here to talk about how the City of Modesto does business at Director Zoslocki's request, and to talk about values and norms that Director Zoslocki believes he would have conducted this termination, and how he believes the City of Modesto would also have conducted it.

Vice Chair Soiseth stated that he believes the legal representation for the SRWA has not been the norms and best practices. He stated there was a concerted discussion about the lack of legal representation and the decision to proceed with termination. He also stated the fact that Davidovitz sent the email only to the Chair, Larry Parlin, and Adam Lindgren is a perfect example. He questioned why it wasn't sent to the other cities' representatives as well.

Mr. Lindgren stated that the SRWA is an independent public body that has been slated to do a very difficult and important job. He also stated that he felt if the Board contacted Mr. Davidovitz directly they would provide representation for the next 30 days.

It was moved to approve by Vice Chair Gary Soiseth, seconded by Chair Vierra, and carried unanimously to discharge Davidovitz and Bennett pursuant to paragraph 6 of the Services Agreement between the Stanislaus Regional Water Authority and Davidovitz and Bennett. Authorize the Chair to take any and all action necessary to discharge Davidovitz and Bennett including, but not limited to, providing Davidovitz and Bennett with thirty days written notice of discharge pursuant to paragraph 6 of the Services Agreement.





# STANISLAUS REGIONAL WATER AUTHORITY

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- IV. Matters Too Late for the Agenda – Resignation letter from IGM Steve Stroud. Mr. Stroud stated his willingness to stay on through the end of December to give the Board the time to bring on a new General Manager. Chair Vierra and Vice Chair Soiseth thanked Mr. Stroud for his service as IGM for the SRWA.
- V. Adjournment – The meeting adjourned at 11:15 a.m. to Closed Session

Report out of Closed Session:

Phaedra Norton, City Attorney for Turlock, will be the Interim General Counsel for six months.

Jennifer Land, City of Turlock will be the Board Secretary.

From: Steve Stroud, Interim General Manager

Prepared by: Jennifer Land, Board Secretary

**1. ACTION RECOMMENDED:**

Motion: Approving an agreement between the City of Turlock and the Stanislaus Regional Water Authority (SRWA) for interim legal services and authorizing the Board Chair to execute said agreement

**2. DISCUSSION OF ISSUE:**

On September 3, 2015, the Stanislaus Regional Water Authority (SRWA) Board unanimously voted to appoint an Interim General Counsel. The SRWA has conditionally selected Turlock's City Attorney to serve in the capacity of Interim General Counsel. The conditional appointment of Interim General Counsel is subject to Turlock and SRWA entering into an agreement for legal services that is acceptable to both parties.

On September 8, 2015, the Turlock City Council unanimously approved the agreement between the City of Turlock and the SRWA for Interim General Counsel. In order for the appointment of the Interim General Counsel to become effective, approval of the attached agreement is required by the SRWA.

**3. FISCAL IMPACT / BUDGET AMENDMENT:**

SRWA will compensate Turlock for the interim legal services provided in accordance with the attached agreement.

**4. INTERIM GENERAL MANAGER'S COMMENTS:**

The Interim General Manager recommends approval.

**5. ENVIRONMENTAL DETERMINATION:**

N/A

**6. ALTERNATIVES:**

Do not authorize the Board Chair to execute the agreement between the City of Turlock and the Stanislaus Regional Water Authority for Legal Services dated September 8, 2015.



**AGREEMENT BETWEEN  
THE CITY OF TURLOCK  
and  
THE STANISLAUS REGIONAL WATER AUTHORITY  
for  
LEGAL SERVICES**

**THIS AGREEMENT FOR GENERAL ADVISORY LEGAL SERVICES** ("Agreement") is entered into as of September 8, 2015 ("Effective Date") by and between the **CITY OF TURLOCK**, a California Municipal Corporation ("TURLOCK"), and the **STANISLAUS REGIONAL WATER AUTHORITY**, a joint powers authority ("SRWA"). TURLOCK and SRWA are each a "Party" and together are the "Parties" to this Agreement.

SRWA requires the services of legal counsel to represent SRWA in connection with providing advisory general counsel to SRWA on an as-needed/as-required basis. TURLOCK, through the staff of its City Attorney's Office, has personnel who are qualified to provide such services, and the Parties are authorized to contract for such services.

The Parties therefore agree as follows:

**1. Scope of Services.** TURLOCK shall provide general advisory legal services to SRWA, subject to the direction of SRWA's Board of Directors.

Where appropriate, Attorney may, from time to time, recommend the use of special counsel and SRWA shall engage the use of special counsel when recommended by Attorney. In that event, Attorney shall coordinate the work of special counsel. Notwithstanding the foregoing, Attorney shall not be responsible for any pending litigation matter(s) until Attorney has specifically appeared in the matter as attorney of record on behalf of SRWA.

**2. Duties.** SRWA agrees to provide such information, assistance, cooperation, and access to books, records, and other information, as is necessary for TURLOCK to effectively render its professional services under this Agreement. SRWA further agrees to abide by this Agreement and to pay, in a timely manner, TURLOCK's bills for fees, costs, and expenses.

3. **Term.** The term of this Agreement shall be from the Effective Date until terminated in accordance with the terms of this Agreement.

4. **Consideration.** As full consideration for the work to be performed by TURLOCK, SRWA shall pay TURLOCK in accordance with *Exhibit A*. SRWA shall pay or reimburse TURLOCK for all of TURLOCK's out-of-pocket expenses, including, but not limited to, travel expenses, photocopying, overnight delivery, and messenger services, at the rates shown on *Exhibit A*.

5. **Records.** TURLOCK shall maintain accounting records and other evidence pertaining to the costs incurred and shall make the records available to authorized representatives of SRWA. These records shall be available at all reasonable times during the Agreement period and for four (4) years from the date of final payment for work performed hereunder.

6. **Key Personnel.** All of the services required hereunder shall be performed by TURLOCK or under its supervision, and all personnel engaged in the work shall be fully qualified to perform such services. Any change in the key personnel shall be subject to the advanced written approval of SRWA. The following are the key personnel for this Agreement:

Phaedra A. Norton, Turlock City Attorney, who shall serve as the General Advisory Counsel for SRWA ("Attorney").

7. **Authorized Representative.** SRWA's Board or other authorized representative shall represent SRWA in all matters pertaining to the services rendered by TURLOCK under this Agreement. All documents and requests for information shall be submitted through this representative and SRWA will cooperate with Attorney and TURLOCK in all matters relating to this Agreement in such manner as will result in the performance of such work without delay.

8. **Termination.**

a. Either party may terminate this Agreement at any time, with or without cause, upon ten (10) calendar days' written notice.

b. SRWA may, at any time at its discretion, abandon or suspend any portion of work to be done under the terms of this Agreement.

c. In the event of SRWA's abandonment or suspension of TURLOCK's work under this Agreement, or in the event of the termination of this Agreement, TURLOCK shall stop work at the stage directed by SRWA and shall deliver to SRWA all reports, plans, and other information developed as of such stage. TURLOCK shall also

cancel all orders for goods or services connected with this Agreement which have not been delivered or received.

d. TURLOCK shall accept as full payment for the services rendered and for all work performed and goods and services received at the time of termination, abandonment, or suspension of the work to be performed hereunder and in complete satisfaction of any and all claims against SRWA accruing to TURLOCK by reason of the abandonment or suspension of work or termination of this Agreement, payment for actual work performed in a reasonable amount determined by mutual agreement of the Parties.

**9. Equal Opportunity Assurance.** During the performance of this Agreement, TURLOCK agrees as follows:

a. TURLOCK will not discriminate against any employee or applicant for employment because of race, sex, creed, physical handicap, color, sexual orientation, or national origin. TURLOCK will take affirmative action to ensure that employees are treated equally without regard to race, gender, creed, physical handicap(s), color, sexual orientation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs and terminations, rates of pay or other forms of compensation; and selection for training, including apprenticeship. TURLOCK agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. In the event of TURLOCK's noncompliance with the nondiscrimination clause of this Agreement, this Agreement may be cancelled, terminated, or suspended in whole or in part.

**10. Insurance.** TURLOCK shall, at its own expense, procure and maintain in full force at all times during the term of this Agreement the following insurance, which shall be provided on an occurrence basis (except for Professional Liability, which may be on a claims-made basis). Proof of insurance shall be provided to SRWA upon request.

a. **Commercial General Liability Insurance.** TURLOCK shall maintain limits of no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage.

b. **Automobile Liability Insurance Coverages.** TURLOCK shall procure automobile liability insurance covering all vehicles used in the performance of this Agreement providing a One Million Dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage which may arise from the activities of TURLOCK in performing this Agreement.

c. **Compliance with State Workers' Compensation Requirements.** TURLOCK shall insure itself against liability for Workers' Compensation pursuant to the provisions of California Labor Code Section 3700 *et seq.*

d. **Professional Liability Insurance Requirements.** TURLOCK shall maintain professional liability insurance with coverage for negligent acts, errors, or omissions committed by TURLOCK and its agents and employees in the course of work performed for SRWA under this Agreement in limits of not less than One Million Dollars (\$1,000,000.00). SRWA shall reimburse TURLOCK for the actual cost for said coverage.

**11. Indemnification.** SRWA agrees to defend, indemnify and hold harmless TURLOCK and its elective and appointive boards, officers, officials, agents, employees or volunteers, from all claims, demands, suits and other actions for which protections are afforded to SRWA personnel by the California Government Code, for work done and actions taken within the course and scope of their employment, for work done and actions taken in the course and scope of services as general advisory counsel to SRWA.

**12. Independent Contractor.** TURLOCK is an independent contractor retained by SRWA to perform the work described herein. All personnel employed by TURLOCK, including subcontractors and personnel of said subcontractors approved by SRWA, are not and shall not be deemed to be employees of SRWA, except for purposes of indemnification as set forth in paragraph 11. TURLOCK and approved subcontractors shall comply with all State and Federal laws pertaining to employment and compensation of their employees or agents, including the provision of Workers' Compensation. SRWA shall not, under any circumstances, be liable to TURLOCK or any person or persons acting for it for any death, injury, or property destruction or damage received or claimed relating to or stemming from the activities undertaken pursuant to this Agreement.

**13. Professional Responsibilities – Duty of Loyalty, Ethical Conflicts of Interests.** As an attorney licensed to practice law in the State of California, Attorney is governed by specific rules relating to legal representation of clients when actual or potential conflicts of interest exist. (See Rule 3-310 of the Rules of Professional Conduct of the State Bar of California.) More specifically, Paragraph (B) of Rule 3-310 provides:

(B) [An attorney] shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The [attorney] has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or . . .

(3) The [attorney] has or had a legal, business, financial, professional, or personal relationship with another person or entity the [attorney] knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The [attorney] has or had a legal, business, financial, or professional interest in the subject matter of the representation.

In addition, subdivisions (C)(1) and (C)(2) of Rule 3-310 require Attorney to obtain informed written consent from both TURLOCK and SRWA in a matter in which the "interest of the clients *potentially* conflict," or in a matter in which the "interests of the clients *actually* conflict." Furthermore, pursuant to Rule 3-310, subdivision (E), Attorney must obtain the informed consent of both clients before representing an entity adverse to either's interests, "where, by reason of representation" of a client, Attorney has "obtained confidential information material to the employment" of Attorney by that other party.

The strictures against dual representation have been interpreted to include a "duty of loyalty" to the client which in limited circumstances may prohibit the Attorney from accepting or continuing representation of a client which is adverse to another client even in unrelated matters without the informed written consent of each client. In cases of multiple client representation, there is a risk of divided or at least shared attorney-client loyalties. Although Attorney is not currently aware of any actual adverse effects of such divided or shared loyalty, it is possible that issues may arise as to which Attorney's representation of SRWA may be materially limited by Attorney's representation of TURLOCK, and vice versa. In the event of a dispute between TURLOCK and SRWA concerning future matters, the attorney-client privilege generally will not protect communications that have taken place between or among the clients and attorneys in Attorney's office. Anything TURLOCK or SRWA discloses to Attorney may be disclosed to the other party, and vice versa. Additionally, if a dispute or conflict develops between TURLOCK and SRWA, then in the absence of informed written consent from each, either client generally would be able to disqualify Attorney from representing the other client with respect to such conflict or dispute.

As of the Effective Date, TURLOCK and SRWA do not believe that Attorney's representation of TURLOCK would involve any actual or current conflict of interest that would interfere with Attorney's ability to serve as SRWA's counsel or compromise Attorney's ability to represent SRWA's interests. Although the Parties are not aware that there is a current conflict, out of an abundance of caution, Attorney has asked and the Parties, by their signatures to this Agreement, have consented to Attorney's representation of both TURLOCK and SRWA.

Due to the fact that the Attorney's office is established by law to provide legal services to TURLOCK officers, agencies and departments, and has in addition

undertaken to provide legal services to SRWA by reason of this Agreement, the legal interests of TURLOCK generally may *potentially* conflict in a matter with the legal interests of SRWA. With full knowledge of Rule 3-310 of the Rules of Professional Conduct of the State Bar of California, by executing this Agreement, SRWA AND TURLOCK acknowledge their respective understanding of and waive these potential conflicts of interests and provide their informed written consent to Attorney's simultaneous and separate representation of each Party.

TURLOCK's engagement by SRWA under this Agreement is also understood as entailing SRWA's consent to representation by the Attorney's office of the Attorney's other present or future clients (including TURLOCK) in "transactions," including litigation, in which Attorney has not been engaged to represent SRWA and in which SRWA has other counsel, and in which one of Attorney's other clients, such as TURLOCK, would be adverse to SRWA in matters unrelated to those that Attorney is handling for SRWA. In this regard, SRWA is aware of Attorney's past and on-going representation of TURLOCK and TURLOCK's officers, agencies, departments, other boards and bodies, and TURLOCK's affiliated agencies (collectively, "TURLOCK") in matters which are not currently adverse to SRWA. The Parties are not aware of any current adversity between TURLOCK and SRWA. Given the nature of Attorney's relationship with TURLOCK, however, SRWA understands and accepts Attorney's need to preserve its ability to represent TURLOCK on current matters and matters which may arise in the future, including matters adverse to SRWA, provided that Attorney would only undertake such representation of TURLOCK under circumstances in which Attorney does not possess confidential information of SRWA's relating to the transaction, and TURLOCK would staff such a project with one or more attorneys who are not engaged in SRWA's representation. In such circumstances, the attorneys in the two matters would be subject to an ethical wall, screening them from communicating with each other regarding their respective engagements. By execution of this Agreement, it is agreed that SRWA and TURLOCK waive any conflicts of interest, consent to Attorney's continued representation of TURLOCK and Attorney's other clients under those circumstances, and SRWA agrees not to assert any such conflict of interest or to seek to disqualify Attorney from representing TURLOCK or Attorney's other clients under those circumstances, notwithstanding any adversity that may develop between SRWA and TURLOCK or other of Attorney's clients.

Each Party acknowledges that it has had an opportunity to consult with independent legal counsel about the import of Attorney's proposed representation of both TURLOCK and SRWA and the significance and effect of the written consent to such representation and waiver of conflicts embodied in the execution of this Agreement, and has satisfied itself as to those matters before signing this Agreement. Each Party further acknowledges its understanding that it may at any time during the term of this Agreement consult with independent legal counsel about those matters and, in its sole discretion, may withdraw or modify its consent to such representation and waiver of conflicts at any time.



**14. Attorney-Client Relationship.** It is understood and agreed that a separate attorney-client relationship will exist between the Attorney and SRWA as a result of this Agreement. However, the Parties agree that, due to the common legal issues shared by SRWA and TURLOCK, the Attorney may in appropriate instances share its opinions and advice and other information of general interest with the either or both clients, and whenever the Attorney does so will preserve the confidentiality of personnel or other information protected by law.

**15. Notices.** Any notices or other communication required or permitted hereunder or by law to be delivered to, served on, or given to either Party shall be in writing and shall be deemed properly delivered to such Party at the earliest of (i) the date actually received; (ii) three (3) business days after deposit in the United States mail, postage paid, certified or registered, addressed to the respective Party at the address identified below; or (iii) one (1) business day if delivered by a commercial service which guarantees next-business-day delivery. Permitted delivery methods include commercial delivery services, facsimile transmission, electronic mail (email), or certified, registered, or postage prepaid United States mail, when received or refused. Either Party may change its address for purposes of notice by giving written notice of such change of address, which shall become effective 5 business days after giving notice of the change.

Notices to SRWA shall be given to: Stanislaus Regional Water Authority  
Judy Rosa, SRWA Secretary  
1010 10<sup>th</sup> Street, 4<sup>th</sup> Floor, Suite 4100  
Modesto, CA 95353  
Phone: (209) 577-5213  
E-mail: [jrosa@modestogov.org](mailto:jrosa@modestogov.org)

**AND**

Stanislaus Regional Water Authority  
Jennifer Land, SRWA Secretary  
City of Turlock  
156 S. Broadway, Suite 230  
Turlock, CA 95380  
Phone: (209) 668-5542  
Fax: (209) 668-5668  
E-mail: [jland@turlock.ca.us](mailto:jland@turlock.ca.us)

Notice to TURLOCK shall be given to: Roy Wasden, City Manager  
City of Turlock  
156 S. Broadway, Ste. 230  
Turlock, CA 95380-5454  
Phone: (209) 668-5540  
Fax: (209) 668-5529  
E-mail: [rwasden@turlock.ca.us](mailto:rwasden@turlock.ca.us)

**16. Assignment.** SRWA is entering into this Agreement in consideration of the rendition by TURLOCK of the services required herein. Except as set forth in paragraph 1, TURLOCK shall not assign any of the duties, responsibilities, or obligations of this Agreement to any other firm, company, agency, entity, or individual, except with the express advanced written consent of SRWA.

**17. Amendment.** This Agreement may be amended, modified, or changed by the Parties provided that said amendment, modification, or change is in writing and approved by both Parties.

**18. Entire Agreement.** This Agreement contains the entire agreement between the Parties related to the provision of Attorney legal services. No promise, representation, warranty, or covenant not included in the Agreement has been or is relied upon by either Party.

**19. Invalidity of Any Provision.** If any provision of this Agreement as applied to either Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same will in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

**20. Counterparts.** The Parties may sign this Agreement, in counterpart such that each document, when all signatures are appended together, will constitute a fully signed original or copy thereof.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement as of the day and year written above.

**CITY OF TURLOCK**

By: \_\_\_\_\_

Gary Soiseth, Mayor

or

\_\_\_\_\_  
Roy W. Wasden, City Manager

**STANISLAUS REGIONAL  
WATER AUTHORITY**

By: \_\_\_\_\_

Authorized Representative

## EXHIBIT A

### Billing Rates

SRWA shall compensate TURLOCK for legal services provided within the scope of services as follows:

From the Effective Date through termination SRWA shall pay to TURLOCK a flat rate of One Thousand Eight Hundred Fifty and no/100<sup>ths</sup> Dollars (\$1,850.00) per month for attorney services.

In addition to paying legal fees, SRWA shall reimburse TURLOCK for customary and reasonable costs and expenses incurred by TURLOCK in the course of providing legal services to SRWA. Costs will include, but are not limited to, all third Party expenses, insurance coverage, duplicating, long distance telephone, postage charges, delivery charges, computerized legal research, facsimile charges, and filing fees. Except as provided above, TURLOCK will charge SRWA for travel time at the then-current hourly rates, and for mileage, at the then-current IRS standard rate, to and from SRWA's offices and other locations connected with services under this Agreement. TURLOCK shall prorate SRWA's travel time charges if the assigned attorney(s) travel for two or more clients on the same trip.

TURLOCK shall render to SRWA a statement for flat fees for services and costs incurred every calendar month and for services rendered. SRWA shall pay TURLOCK's statement within thirty (30) calendar days after issuance of each statement.

TURLOCK will exercise discretion to use whichever attorneys and staff that it determines best suited to the rendering of legal services to SRWA in a competent and economically efficient manner.

**Third Party Costs and Expenses:** TURLOCK may determine it necessary or appropriate to use one or more outside investigators, consultants, or experts in rendering the legal services required (particularly if a matter goes into litigation). Upon advance approval of SRWA's authorized representative and proper documentation, SRWA shall pay directly or reimburse TURLOCK for directly incurred out-of-pocket disbursements, costs, and expenses of providing said services.

From: Steve Stroud, Interim General Manager

Prepared by: Phaedra Norton, Interim Legal Counsel

**1. ACTION RECOMMENDED:**

Motion: Approving the Electronic Transmittal Authorization Form and authorizing the Board Secretary to obtain a completed authorization form from each current and future Director

**2. DISCUSSION OF ISSUE:**

Stanislaus Regional Water Authority (SRWA) staff would like to transmit the SRWA Board Agenda and Agenda Packets in a timely, effective, and efficient manner. In an effort to achieve that goal, SRWA staff has developed the attached Electronic Transmittal Authorization Form (Exhibit A). The purpose of this form is to give each Director the opportunity to provide staff with clear and specific direction regarding electronic transmission of the SRWA agenda and agenda packet. In addition, the authorization form outlines the following:

1. The responsibility of each Director to notify the SRWA Board Secretary, if the Director does not receive the agenda and/or agenda packet within the distribution time frames set forth in the authorization form; and
2. The responsibility of each Director to advise the Board Secretary should the Director's e-mail address change.

**3. FISCAL IMPACT / BUDGET AMENDMENT:**

N/A

**4. INTERIM GENERAL MANAGER'S COMMENTS:**

The Interim General Manager recommends approval.

**5. ENVIRONMENTAL DETERMINATION:**

N/A

**6. ALTERNATIVES:**

Elect not to approve the use of electronic transmission for agendas and agenda packets. This is not recommended as significant staff time would be expended in hand-delivery of this information.



STANISLAUS REGIONAL WATER AUTHORITY
P.O. Box 642, Modesto, CA 95353
(209) 577-5213 FAX (209) 577-5477

ELECTRONIC TRANSMITTAL AUTHORIZATION FORM

Effective October 1, 2015, I \_\_\_\_\_ authorize the SRWA
PRINT NAME

Board Secretary to electronically transmit agendas and agenda packets for the
Stanislaus Regional Water Authority Board meetings. Please send the agenda and
agenda packets electronically to \_\_\_\_\_

PRIMARY EMAIL ADDRESS

ALTERNATE EMAIL ADDRESS

Distribution of agendas and agenda packets will be as follows:

Regular meetings - at least 72 hours prior to the meeting date

Special meetings - at least 24 hours prior to the meeting date

I acknowledge that it is my responsibility to contact the SRWA Board Secretary if I do
not receive the agenda or agenda packet within the distribution time frame.

This authorization is valid for a fifteen (15) month period (October 2015 through
December 2016). Should the email addresses provided change throughout this period,
I will notify the SRWA Board Secretary.

SIGNATURE

DATE

From: Steve Stroud, Interim General Manager

Prepared by: Phaedra Norton, Interim Legal Counsel

1. **ACTION RECOMMENDED: None – discussion item only.**

Review the SRWA Bylaws and Joint Powers Authority (JPA) Agreement and provide direction to staff regarding any recommended changes

2. **DISCUSSION OF ISSUE:**

Attached are the Bylaws and the JPA Agreement for the SRWA. Staff is looking for direction from the Board regarding any recommended changes to either document. Any direction provided by the Board will be incorporated into the Bylaws and/or JPA Agreement. The updated documents will be presented to the Board in legislative format for formal approval.

3. **FISCAL IMPACT / BUDGET AMENDMENT:**

N/A

4. **INTERIM GENERAL MANAGER'S COMMENTS:**

The Interim General Manager recommends approval.

5. **ENVIRONMENTAL DETERMINATION:**

N/A

6. **ALTERNATIVES: None**



**BYLAWS OF THE  
STANISLAUS REGIONAL WATER AUTHORITY**

**ARTICLE I**

**AUTHORITY**

The Stanislaus Regional Water Authority, hereinafter referred to as the "SRWA", has been established by the City of Ceres on September 26, 2011 by Resolution No. 2011-135, the City of Modesto on September 27, 2011 by Resolution No. 2011-395, and the City of Turlock on September 27, 2011 by Resolution No. 2011-194.

**ARTICLE II**

**PURPOSE AND OBJECTIVES**

The Cities of Ceres, Modesto, and Turlock (Participants) are interested in finding and evaluating surface water supply options and facilities to serve municipal and industrial water to the customers within their service areas. Each of the cities is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law. The Participants are working with the Turlock Irrigation District (TID) to develop a Regional Surface Water Supply Project (RSWSP) that will provide a safe and reliable high quality surface water supply for the long-term drinking water needs of each participating city. The Participants have formed a Joint Powers Authority for the purpose of making responsible decisions related to the development and operation of the future RSWSP.

The SRWA has the following objectives to accomplish this purpose:

1. Plan and develop the implementation of surface water supplies;
2. Function as the community focal point for all grant/aid applications related to the project;
3. Develop a support staff;

4. Develop the procedures for establishing and conducting the SRWA's coordination functions;
5. Design, construct, finance, own, and operate the Project facilities;
6. Provide treated water At Cost and on the same terms and on an equitable basis to the Participants; and
7. The method of which the purposes of the Agreement shall be financed through the sale of Certificates of Participation, the issuance of Bonds, or such other method as agreed upon by the Participants.

The SRWA is established for the purposes listed above and shall exercise all the powers set forth in the September 27, 2011 Drinking Water Supply Project Joint Exercise of Power Agreement (Agreement). The definitions of terms used in these Bylaws shall be the same as contained in the Agreement, unless otherwise expressly provided herein.

### **ARTICLE III**

#### **POWERS**

The SRWA shall have and shall exercise powers attributable to the City of Modesto, except as herein prohibited and otherwise prohibited by law. The SRWA is hereby authorized, in its own name acting through the Governing Board, to do all acts necessary or convenient for the exercise of its power to accomplish its objectives, including, but not limited to:

1. Employ agents, consultants, advisors, independent contractors, and employees;
2. Make and enter into contracts;
3. Acquire, hold , and convey real and personal property;
4. Incur debts, obligations, and liabilities;
5. Accept contributions, grants, or loans from any public or private agency or individual, of the United States, or any department, instrumentality, or agency thereof for the purpose of financing its activities;
6. Invest money that is not needed for immediate necessities, as the Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code;
7. Reimburse Directors for reasonable and necessary expenses incurred in performing the duties of their office;
8. Reimburse Participants for the direct costs incurred in the formation of the Authority.



9. Sue and be sued in its own name, all as provided in Section 6508 of the Act, as well as the power of eminent domain;
10. Exercise any powers, as agreed to by the parties;
11. Do all other acts reasonable and necessary to carry out the purpose of this Agreement;
12. To acquire, construct, manage or maintain or operate any building, works or Capital improvements related to the project; and
13. To levy and collect revenue and funding as authorized by law.

Such powers shall be exercised in the manner provided by the Act and except as expressly set forth herein, subject only to the restriction of exercising its powers, imposed upon the City of Modesto in the exercise of similar powers. Notwithstanding the generality of the foregoing, the SRWA shall have no power to bind any of the Participants to any monetary obligation whatsoever other than expressly authorized by the mutual written consent of the Participants. The SRWA shall be strictly accountable for all funds received, held, and disbursed by it.

#### **ARTICLE IV**

##### **GOVERNING BOARD OF DIRECTORS**

The SRWA shall be administered by a Governing Board (Board), which will include the following members:

1. One member and one alternate from each City Council of each City which is an original Participant.
2. Each Director of the Board shall have one vote which shall be equal in weight to the vote of each other Director.
  - a. In the event of a tie vote, and only in that event, the General Manager shall have a vote equal to the weight to that of a Director.
  - b. If a conflict arises, the item will be continued until the next meeting or until such time as the conflict is resolved
3. The Mayor of each Participant may be a member in lieu of a City Council person.
4. Termination of a Director's status as a councilmember or mayor shall constitute automatic termination of the person's directorship on the Governing Board.

5. The Board shall have an Ex-officio Director from Stanislaus County Board of Supervisors, or other agencies, as deemed necessary from time to time. Each Ex-officio Director shall serve in a non-voting, advisory capacity.
6. The Board shall select a Chair and Vice Chair. The Chair shall preside at all Board meetings, and the Vice Chair shall act in place of the Chair when the Chair is absent.
7. The Board shall appoint a General Manager, a Secretary, and other officers as determined necessary by the Board, and they shall serve at the pleasure of the Board.

## **ARTICLE V**

### **MEETINGS OF THE BOARD**

1. The Board shall hold at least one regular meeting each calendar quarter, or as often as the Board deems necessary to conduct SRWA business.
2. The meetings shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.), and according to the modified Robert's Rules of Order.
3. The regular meetings of the Board will be held on the fourth Thursday of the month of the meeting scheduling, at 10 a.m., at the designated City offices, which will be scheduled on a rotating basis.
4. The locations of the meetings are rotated in the following order at the locations as listed:
  - a. City of Modesto, City Hall, 1010 Tenth Street, 2<sup>nd</sup> Floor, Room 2001
  - b. City of Turlock, City Hall, 156 South Broadway, 2<sup>nd</sup> Floor, Yosemite Room
  - c. City of Ceres, Community Center, 2701 4<sup>th</sup> Street, Upstairs Classroom
5. A minimum of three (3) Directors shall be required for the approval of any action taken by the Board, unless otherwise stated in the Agreement.

## **ARTICLE VI**

### **OFFICERS**

1. The Chair of the Board shall be elected annually by the Board on a rotating basis. The Chair shall:
  - a. Coordinate the work of officers and committees of the SRWA in order that the SRWA's purposes are promoted;
  - b. Preside at all meetings of the SRWA;

- c. From time to time, the Chair may appoint ad hoc committees to study specific project or program elements as may be desirable, subject to the approval of the Board;
  - d. Perform other duties as assigned by the Board; and
  - e. Be the approved signatory on legal or formal documents of the SRWA.
2. The Vice Chair shall assist the Chair in performance of duties; perform the duties of the Chair in the absence or inability of that officer to act; and other duties assigned by the Board.
3. The General Manager will be in charge of the day-to-day operations of the project, including but not limited to, operations, maintenance, budget, and capital projects. The General Manager shall serve at the pleasure of the Board, and shall have the power to hire and discipline employees in accordance with the personnel rules of the SRWA.
4. The General Counsel shall provide legal advice and services to the SRWA. The General Counsel shall be appointed by and shall serve at the pleasure of the Governing Board.
5. The Secretary shall:
  - a. Keep, or cause to be kept, accurate records of the proceedings of all meetings of the SRWA, and shall, as soon as possible after each meeting, forward a copy of the minutes to each Director of the Board;
  - b. Be responsible to prepare, or cause to be prepared, meeting schedules, notices, resolutions, and agendas;
  - c. Make such records of the proceedings available to the Board Directors for their approval at each meeting;
  - d. Keep Directors and agencies informed of meeting proceedings and activities of the SRWA;
  - e. Conduct all necessary correspondence of the SRWA;
  - f. Be responsible for preparing, or causing to be prepared, any annual reports required by law;
  - g. Prepare such notices and reports as may be requested by the Board;
  - h. Prepare, or cause to be prepared, periodic reports on the financial status of the SRWA;
  - i. Be responsible for coordinating the annual audit of the SRWA; and
  - j. Be responsible for record keeping for the SRWA, which will be housed at the City of Modesto offices.
6. The Finance Director for the SRWA shall be the City of Modesto Director of Finance, as determined by the Agreement, and shall:
  - a. Receive, have custody, and disburse Authority funds pursuant to the procedures established by the Authority.
  - b. Within 100 days after the close of each Fiscal Year, give a preliminary written auditor report of all financial activities to the Board in January of each year for the previous fiscal year.

- c. Audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Board in any of the following cases:
      - i. Expenditures authorized by purchase order issued by an officer of the SRWA, authorized by the Board to make purchases.
      - ii. Expenditures authorized by contract, resolution, or order of the Board acting within the scope of its authority.
7. As Treasurer, the Finance Director for the SRWA shall:
  - a. Have custody of all money of the SRWA from whatever source in accordance with Section 6505.5 of the Law, and, as such, shall have the powers, duties, and responsibilities specified in such Section 6505.5 of the Law; provided, however, that moneys of the Authority shall be kept separate and apart from, and shall not be commingled with, moneys of the City.
8. Auditor for the SRWA shall be the auditor of the City of Modesto, as stated in Article XVII of the Agreement, and shall
  - a. Have the powers, duties, and responsibilities specified in Section 6505.5 of the Law.
9. The General Manager will also act as Purchasing Manager until such time as the Board directs otherwise. The Purchasing Manager will utilize the Policies and Procedures of the City of Modesto as guidelines for securing goods and services for the SRWA, with the purchasing limit set a \$25,000 per occurrence, and until such time as the SRWA adopts policies and procedures specific to the SRWA.
10. The Chair of the Board may appoint a technical advisory committee composed of staff from the various Participants to provide technical guidance and input for Board review and consideration.

## **ARTICLE VII**

### **CONFLICT OF INTEREST**

The SRWA shall adopt a Conflict of Interest Code in Accordance with the Political Reform Act (commencing with Section 81000 of the Government Code of the State).

## **ARTICLE VIII**

### **AMENDMENTS TO BYLAWS**

These Bylaws may be amended, repealed, or altered, in whole or in part, by two-thirds vote of the Board. The secretary of the SRWA shall prepare and distribute any revisions to all Board members.

DRINKING WATER SUPPLY PROJECT  
JOINT EXERCISE OF POWERS AGREEMENT  
BETWEEN  
THE CITIES OF CERES, MODESTO, AND TURLOCK,  
FOR THE PURPOSE OF CREATING A JOINT POWERS  
AUTHORITY RESPONSIBLE FOR DECISIONS IN CERTAIN MATTERS  
PERTAINING TO THE MUNICIPAL AND INDUSTRIAL WATER SUPPLY  
PROGRAMS FOR THE AFOREMENTIONED PUBLIC ENTITIES

**THIS AGREEMENT**, dated for convenience as of September 27, 2011, is by and between the Cities of Ceres, Modesto, and Turlock, hereinafter "Participants", being municipal corporations duly organized and existing under the laws of the State of California.

**WHEREAS**, the intent of the parties to this Agreement is to create a Joint Powers Authority that would purchase water from the Turlock Irrigation District (hereinafter referred to as "TID"), would treat such water and would make such treated water available At Cost to the Participants; and

**WHEREAS**, Participants are interested in finding and evaluating surface water supply options and facilities to serve municipal and industrial water to the customers within their service areas; and

**WHEREAS**, Participants desire to develop a safe, dependable, economical, and long-term municipal and industrial water supply system; and

**WHEREAS**, the Participants desire to tailor the project to individual community needs; and

**WHEREAS**, each of the Participants has heretofore been participating in a Project to seek an alternative surface water supply; and

**WHEREAS**, All Participants desire to establish a joint powers authority by this Agreement so they may collectively discuss, develop and negotiate alternatives regarding the aforementioned Project; and

**WHEREAS**, The Participants desire to secure a reliable source of surface water for municipal and industrial water and other municipal purposes; and

**WHEREAS**, each of the Participants is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law.

**NOW, THEREFORE**, the Participants, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

## ARTICLE I. DEFINITIONS:

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meaning herein specified.

A. "Act" means Articles I through 4 (commencing with section 6500) of chapter 5, division 7, Title 1 of the Government Code of the State of California.

B. "Agreement" means this Agreement.

C. "At Cost" means the actual cost per million gallons of project water paid by each Participant. The components of cost will include engineering costs, construction costs, project operating and maintenance costs, raw water costs, project sunk costs, and financing costs.

D. "Authority" means the Stanislaus Regional Water Authority established pursuant to this Agreement.

E. "Bonds" means certificates of participation or bonds of the Authority issued pursuant to Article 2 (commencing with section 6540) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

F. "Capital Improvements" means any facility or facilities, whether newly constructed, expanded, rehabilitated, or otherwise acquired, including but not limited to purchase of land or water rights, which are for the purposes of carrying out the purposes of the Project.

G. "Capital Costs" mean the project-related costs of construction, financing, acquiring, planning, designing, environmental documentation and permitting (including any mitigation costs or filing fees related to permitting) and the funding of a reasonable capital reserve. Capital Costs include the initial Project construction and subsequent Capital Costs of Project repair, replacement, modification, and improvement.

H. "Fixed Operating Costs" mean those Project-related operating maintenance and management costs that are incurred irrespective of the amount of water conveyed through the Project, including, but not limited to, consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued to finance the Capital Costs, bond reserve funds, and the cost of bond or financing agreements.

I. "Variable Operating Costs" mean those Project-related operating and maintenance costs and other costs that are dependent on, and vary based on, the volume of water actually conveyed through the Project (including, but not limited to, the costs of water (e.g., supplied under a water supply contract) and power), length or size of the Transmission Piping, or such other method as may be established by the unanimous Governing Board approval.

J. "Construction" means the Project-related procurement of materials, parts and

equipment, construction, construction management, and related field services including project management activities, contractor management, design assistance during construction, as-built-drawings, and start-up testing.

K. "Directors" mean the representatives of the Participants appointed to the governing body pursuant to Article V.

L. "Finance Director" shall mean the person designated by Article XVI of this Agreement.

M. "Governing Board" means the governing board established pursuant to Article V, Paragraph A.

N. "Fiscal Year" means the period from July 1 to and including the following June 30.

O. "Participants and Participant" means all of the original parties to this Agreement.

P. "Project" means the acquisition of a safe, reliable, economical long-term municipal and industrial water supply system or systems, including without limitation, scoping and data collection, program planning, facilities planning, design and construction, program start up and contracting for, and acquisition of water rights and /or water delivery.

Q. "General Manager" means the person selected by the Governing Board to manage the day-to-day operations of the Project, in an at-will employment relationship to the Board, which shall have overall Project management responsibility.

R. "Public Agency" means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Participants.

S. "Secretary" means the Secretary of Authority.

T. "State" means the State of California.

U. "Ex-officio" means non-voting Director of the Governing Board serving in an advisory capacity.

V. "Project Facility" or "Project Facilities" means each facility or facilities as identified as a Project Facility in Exhibit B, attached hereto and incorporated herein.

W. "Dedicated Capacity" means the water capacity of the Project Facilities dedicated to each Participant as set forth in "Exhibit A".

## ARTICLE II. PURPOSE:

A. The purpose of this Agreement is to establish a Joint Powers Authority responsible for representing the Participants in decisions and matters relating to the Project.

B. Objectives: The Authority created by this Agreement has the following objectives to accomplish its purpose:

1. Plan and develop the implementation of surface water supplies;
2. Function as the community focal point for all grant/aid applications related to the project;
3. Develop a support staff;
4. Develop the procedures for establishing and conducting this Authority's coordination functions;
5. Design, construct, finance, own, and operate the Project Facilities;  
and
6. Provide treated water At Cost and on the same terms and on an equitable basis to the Participants.
7. The method by which the purposes of this Agreement shall be financed is through the sale of Certificates of Participation, the issuance of Bonds, or such other method as agreed upon by the Participants.

#### ARTICLE III. FORMATION:

Upon the effective date of this Agreement, there is hereby established the Stanislaus Regional Water Authority pursuant to the provisions of Article 1, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with Section 6500, hereinafter "Act. As provided in Section 6507 of the Act, the Authority shall be a public entity separate from each of the Participants.

#### ARTICLE IV. TERM:

This Agreement will become effective upon the date of its execution by all of the original Participants and shall continue in full force and effect until terminated. This Agreement may be terminated at any time by mutual agreement of all Participants thereof.

#### ARTICLE V. GOVERNING BOARD:

A. Governing Board: The Authority shall be administered by a Governing Board which shall be comprised of the following: One member from each City Council of each City which is an original Participant. Within 60 days after the execution of this Agreement by the Participants, each Participant shall designate its Governing Board member (Director) and an alternate. Each Director of the Governing Board shall have one vote which shall be equal in weight to the vote of each other Director. In the event of a tie-vote, and only in that event, the General Manager shall have a vote equal in weight to that of a Director. The Mayor of each Participant may be a Director in lieu of



a City Council person and termination of a Director's status as a Councilmember or Mayor shall constitute automatic termination of that person's Directorship on the Authority's Governing Board. The appointing City may appoint a new Director or alternate Director immediately upon the occurrence of any vacancy in that party's representation, or the alternate Director appointed pursuant to this Article V may serve until a new Director is appointed. Each City shall appoint one alternate Director to serve the Authority during the absence of any regular Director from any meeting of the Authority, and that Director's alternate shall be entitled to participate in all respects as a regular Director of the Authority. The Governing Board shall have Ex-officio Directors as the Governing Board shall from time-to-time designate. Each Ex-officio Director shall serve in a non-voting, advisory capacity.

B. Automatic termination from the Governing Board and the Authority: Prior to commencement of the construction of the Project Facilities an agreement or agreements detailing ownership and operation will have to be consummated. Failure of any Participant or Participants to approve and endorse such agreement or agreements shall automatically terminate the entity from participation in the project and terminate their membership in the Authority.

C. Meeting: The Governing Board shall hold at least one regular meeting each calendar quarter. All meetings shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.). A minimum of three (3) Directors shall constitute a quorum for the transaction of business and the affirmative vote of at least three (3) Directors shall be required for the approval of any action taken by the Governing Board, unless otherwise stated herein.

The Secretary shall keep minutes of all meetings of the Governing Board and shall, as soon as possible after each meeting, forward a copy of the minutes to each Director of the Governing Board.

D. Officers: The Governing Board shall select a Chair and a Vice Chair. It shall then appoint a General Manager, a Secretary and any other officers as determined necessary by the Governing Board. The Chair shall preside at all Authority meetings. The Vice Chair shall act in place of the Chair at meetings should the Chairman be absent. All officers shall serve at the pleasure of the Board.

E. Bylaws: The Governing Board may, from time to time, adopt such bylaws and regulations for the conduct of its meetings as are necessary for the purposes herein.

The duties of certain officers are as follows:

1. The Chair of the Governing Board shall be elected by the Governing Board on a rotating basis and the Chair shall coordinate the work of officers and committees of the Authority in order that the Authority's purposes may be promoted; preside at all meetings of the Authority; appoint such ad hoc committees as may be desirable, subject to the approval of the Governing Board; perform such other duties as assigned to him or her by the Governing Board; and be the approved

signatory on legal or formal documents of the Authority.

2. The Vice Chair shall assist the Chair in the performance of his or her duties; perform the duties of the Chair in the absence or inability of that officer to act; and perform such duties as may be assigned to him or her by the Governing Board.

3. The General Manager shall be in charge of the day-to-day operations of the project, including but not limited to, operations, maintenance, budget and capital projects. The General Manager shall serve at the pleasure of the Governing Board, and shall have the power to hire and discipline employees in accordance with the personnel rules of the Authority.

4. General Counsel. The General Counsel shall provide legal advice and services to the Authority. The General Counsel shall be appointed by and shall serve at the pleasure of the Governing Board.

5. The Secretary shall keep, or cause to be kept, accurate records of the proceedings of all meetings of the Authority; be responsible to prepare, or cause to be prepared, meeting schedules, notices, resolutions and agendas; make such records of the proceedings available to the Governing Board Directors for their approval at each meeting; keep Directors and agencies informed of meeting proceedings and activities of the Authority; conduct all necessary correspondence of the Authority; be responsible for preparing, or causing to be prepared, any annual reports required by law; prepare such notices and reports as may be requested by the Governing Board; prepare, or cause to be prepared, periodic reports on the financial status of the Authority; and be responsible for coordinating the annual audit of the Authority, as required by this Agreement.

#### ARTICLE VI. POWERS OF THE AUTHORITY:

The Authority shall have and shall exercise powers attributable to the City of Modesto, except as herein prohibited and otherwise prohibited by law. The Authority is hereby authorized, in its own name acting through the Governing Board, to do all acts necessary or convenient for the exercise of its powers to accomplish its objectives, including, but not limited to:

- A. Employ agents, consultants, advisors, independent contractors, and employees;
- B. Make and enter into contracts;
- C. Acquire, hold and convey real and personal property;
- D. Incur debts, obligations and liabilities;
- E. Accept contributions, grants, or loans from any public or private agency or individual or the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities;
- F. Invest money that is not needed for immediate necessities, as the

Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code;

G. Reimburse Directors for reasonable and necessary expenses incurred in performing the duties of their office;

H. Reimburse Participants for the direct costs incurred in the formation of the Authority and continued testing of the source waters.

I. Sue and be sued in its own name, all as provided in Section 6508 of the Act, as well as the power of eminent domain;

J. Exercise any powers, as agreed to by the parties; and

K. Do all other acts reasonable and necessary to carry out the purpose of this Agreement.

L. To acquire, construct, manage or maintain or operate any building, works or Capital improvements.

M. To levy and collect revenue and funding as authorized by law.

Such powers shall be exercised in the manner provided by the Act and except as expressly set forth herein, subject only to the restriction of exercising its powers, imposed upon the City of Modesto in the exercise of similar powers. Notwithstanding the generality of the foregoing, the Authority shall have no power to bind any of the Participants to any monetary obligation whatsoever other than expressly authorized by the mutual written consent of the Participants. The Authority shall be strictly accountable for all funds received, held, and disbursed by it.

#### ARTICLE VII. DUTIES AND RESPONSIBILITIES OF THE AUTHORITY:

A. The Authority shall perform various functions that are necessary to fulfill its objectives and goals and carry out the purposes of the Authority.

B. The Authority shall function as the community focal point for all grant/aid applications in regard to the Project.

C. The Authority shall develop the necessary support staff.

D. The Authority shall develop the procedures for establishing and conducting the Authority's functions.

E. The Authority shall establish a funding basis for initial and sustained operations.

F. Within 120 days after the first meeting of the Governing Board, and thereafter prior to the commencement of the fiscal year, the Governing Board shall adopt a budget.

G. The Authority shall prepare a budget for the Project at least thirty (30) days prior to the beginning of each fiscal year.

1. All Project budgets shall include fixed operating, variable operating, and Capital costs.

2. Budget principle: In preparing and reviewing budgets for the Project, the Authority shall be guided by the principle that the Project shall be operated in as economic manner as practical in accordance with generally accepted municipal and industrial water practices as evidenced by similar size municipal and industrial water systems in Northern California.

#### ARTICLE VIII. FUNDS DEPOSIT IN PARTICIPANTS TREASURY:

A. The Authority may accept and expend funds from public or private sources, subject to the restrictions of law, for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.

B. Subject to the provisions of this Agreement and any applicable law, the Finance Director shall receive, have custody and disburse Authority funds pursuant to the procedures established by the Authority.

#### ARTICLE IX. EXPENDITURES AND OBLIGATIONS:

A. The Directors and every other official or employee of the Authority shall be limited in the making of expenditures or incurring of liabilities to the amount of the appropriations allowed by the budget as adopted by the Governing Board or thereafter revised by the Board, in accordance with procedural rules for expenditures and obligations of funds as adopted by the Governing Board.

B. Except as otherwise provided by law, warrants issued, expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the Authority or a liability of any party to this Agreement.

C. Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities, and obligations of the Authority shall be those of the Authority and not of the

Participants in this Joint Powers Agreement.

ARTICLE X. PURCHASES:

The Governing Board of the Authority shall designate a Purchasing Agent for the Authority.

ARTICLE XI. RECORDS AND ACCOUNTS:

A. The Authority shall be strictly accountable for all funds.

B. The Governing Board of the Authority shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all of the transactions of the Project including all receipts and disbursements. The books and records shall be kept in accordance with Section 6505 of the Act and rules and regulations of the State Controller. The books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the Participants in this Agreement.

C. The Governing Board of the Authority shall cause to be prepared an annual financial and operational report pursuant to Section 6505 of the Act, including a report of all receipts and disbursements of funds which shall be available at the office of the Secretary and a copy thereof shall be delivered to each party to this Agreement. The report shall be filed within 180 days of the close of each fiscal year.

D. The Finance Director, within 100 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such fiscal year to the Participants to this Agreement.

ARTICLE XII. CLAIMS:

All claims against the Authority, including but not limited to contested claims by public entities, or public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title I of the Government Code or in accordance with claims procedures approved by the Treasurer and established by the Governing Board of the Authority pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code.

ARTICLE XIII. ALLOWANCE OF CLAIMS BY FINANCE DIRECTOR:

The Finance Director shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Governing Board of the Authority in any of

the following cases: Expenditures which have been authorized by purchase orders issued by an officer of the Authority authorized by said Governing Board to make purchases. Expenditures which have been authorized by contract, resolution or order of the Governing Board acting within the scope of its authority.

#### ARTICLE XIV. INSURANCE/BONDS:

The Authority shall at all times maintain worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the Authority, its officers, employees or agents and the Participants to this Agreement. Such insurance may be maintained in whole or in part in the form of self-insurance.

#### ARTICLE XV. FINANCING:

A. It is the intent of the Participants that the Joint Powers Authority shall become financially self-sufficient. Each of the Participants shall contribute a percentage of the budget based on its anticipated participation as set forth in Exhibit "A" attached hereto.

B. Each of the Participants agrees that its Water Enterprise Fund or such other fund as a Participant may determine, but not the Participant's General Fund, shall be responsible for paying its respective share of the budget as set forth in Exhibit "A" attached hereto.

C. Each of the Participants to this Agreement may, but is not required to, contribute additional money, office space, furnishings, equipment, supplies or services as the respective Participants, thereof may deem appropriate.

D. Funds may also be derived through State subvention funds, Federal grants, bonds or other available sources. The Authority may also apply for available State or Federal funds and shall make new and additional applications from time to time as appropriate. The Authority may also establish and collect various fees, leases or rents as may be authorized by law.

E. The initial budget shall not exceed \$100,000.00 unless specifically authorized by unanimous vote of the Governing Board.

F. The Governing Board shall determine on an annual basis, prior to the beginning of each fiscal year, a level of reasonable cash reserves to be accumulated by the Authority. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Authority. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Authority shall be considered excess revenue and, subject to any limitation in any bond or other financing

agreement, carried forward as revenue for the next fiscal year and serve to reduce each Participant's respective assessment for such subsequent fiscal year

ARTICLE XVI. FINANCE DIRECTOR DESIGNATED AS TREASURER:

The Finance Director of Modesto is hereby designated to be Treasurer of the Authority. Subject to the applicable provisions of any resolution, trust agreement or indenture authorizing the sale of certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Finance Director is designated as the depository of the Authority to have custody of all money of the Authority from whatever source in accordance with Section 6505.5 of the Law, and, as such, shall have the powers, duties and responsibilities specified in such Section 6505.5 of the Law; provided, however, that moneys of the Authority shall be kept separate and apart from, and shall not be commingled with, moneys of the City.

ARTICLE XVII. AUDITOR:

The Auditor, being of the same public agency as the Finance Director, is hereby designated as Auditor of the Authority in accordance with Section 6505.5 of the Law. Subject to the applicable provisions of any resolution, trust agreement, or indenture authorizing the sale of Certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Auditor shall have the powers, duties and responsibilities specified in such Section 6505.5 of the Law.

ARTICLE XVIII. CHARGES FOR SERVICE OF TREASURER AND AUDITOR:

City Council of the City of Modesto, being the governing body of the same public entity as the Treasurer and Auditor, shall determine the charges to be made against the Authority for such services of the Treasurer and the Auditor, as provided in Section 6505.5 of the Law. All charges assessed by City's Council shall relate to direct costs incurred by the City of Modesto for the services provided to the Authority by the Depository and the Auditor, and are subject to the approval of the Governing Board.

ARTICLE XIX. BONDING PERSONS HAVING ACCESS TO PROPERTY:

The Participants acting through the Governing Board shall designate the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond with the Secretary of the Authority in the amount fixed by the Governing Board, all as required by Section 6505.1 of the Law. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond obtained in connection with another public office.

ARTICLE XX. PARTICIPANT EMPLOYEES:

Each Participant shall assume all liability related to its employees who provide services in connection with this Agreement and shall indemnify and hold harmless the Authority, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising therefrom. However, the Authority may, in its sole discretion, procure a policy or policies of insurance in the types and amounts it deems appropriate. In the event such policy or policies of insurance are procured by the Authority, such insurance coverage shall be primary over any obligation of the Participant under this section.

#### ARTICLE XXI: FINANCIAL ACCOUNTABILITY AND REPORTING

The Authority shall provide for strict accountability of all funds and report of all receipts and disbursements, in accordance with Section 6505 of the Law, and shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any resolution of the Authority providing for the sale of Certificates of Participation or the issuance of Bonds. The Authority shall maintain during the term of the Agreement, appropriate books, records, accounts, and files relating to its revenues and expenses, all of which shall be open to inspection at all reasonable times by the Participants, the Directors, and their designated representatives.

#### ARTICLE XXII. CONTRACT WITH CERTIFIED PUBLIC ACCOUNTANT:

The Auditor of the Authority shall either make or contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, as required by Section 6505 of the Law. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally acceptable auditing standards. When such an audit of accounts and records is made by a certified public accountant, a report thereof shall be filed with each Director and with each Participant. Such report shall be filed within six (6) months of the end of the fiscal year under examination. Any costs of the audit, including contract with, or employment of, certified public accountants in making an audit pursuant to this section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

#### ARTICLE XXIII. ADJUSTMENTS TO DEDICATED CAPACITY

Any two or more of the Participants may adjust their respective Dedicated Capacity shares and redistribute their respective shares among themselves, so long as the total Dedicated Capacity share percentages of the Participants in the redistribution remains the same after the redistribution. The redistribution may be temporary or permanent. The redistribution shall be in writing, approved and signed by the involved Participants who are participating in the redistribution, and filed with the Authority. If



temporary, the writing shall indicate the effective dates of the redistribution. The redistribution also may reallocate the Participants' respective payment shares under Exhibit A, in which case the writing also shall indicate the changes to the Exhibit A shares, whether temporary or permanent, and, if temporary, the effective dates of the changes.

#### ARTICLE XXIV. BREACH:

If default shall be made by a Participant of any covenant contained in the Agreement, such default shall not excuse the other Participants from fulfilling their obligations under the Agreement and the other Participants shall continue to be liable for obligations herein contained. The Participants hereby declare that the Agreement is entered into for the benefit of the Authority created hereby and the Participants hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each Participant hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of any one right or remedy shall not impair the right of the Authority to any or all other remedies.

#### ARTICLE XXV. DISPOSITION OF ASSETS ON TERMINATION OF AGREEMENT:

At the termination of this Agreement, all funds on hand shall be returned to the respective Participants as nearly as possible in the proportion to the contribution that Participant made to the funds then on hand. Any equipment, furniture, or furnishing that can be identified as having been contributed by any Participant to this Agreement shall be transferred to and become the property of the Participant contributing such equipment, furniture, or furnishings. Any other property of the Authority shall be converted to cash and distributed among the Participants to this Agreement in proportion to their contributions.

#### ARTICLE XXVI. NOTICES:

Notices hereunder shall be sufficient if delivered to:

Art deWerk	Greg Nyhoff	Roy Wasden
City Manager	City Manager	City Manager
City of Ceres	City of Modesto	City of Turlock
2720 Second Street	P.O. Box 642	156 South Broadway
Ceres, CA 95307	Modesto, CA 95353	Turlock, CA 95381

#### ARTICLE XXVII. MISCELLANEOUS:

A. The article headings herein are for convenience only and are not to be construed as modifying or governing the language of the article referred to.

B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

C. This Agreement is made in California under the Constitution and laws of California and is to be so construed.

D. To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there will be one or more additional agreements executed and amended from time to time which will further define the rights and obligations of the participants regarding owning, operating, maintaining and financing the Project.

E. This Agreement may be amended any time by mutual agreement of the Participants provided that before any amendments shall be operative or valid, they shall be reduced to writing and executed by all of the Participants.

#### ARTICLE XXVIII. PARTIAL INVALIDITY:

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

#### ARTICLE XXIX. INCORPORATION OF THE ACT:

Notwithstanding any other provision of this Agreement, it is the intent of the Participants that all actions of the Authority and the Governing Board shall be in conformance with the Act or regulations adopted pursuant thereto as they exist on the effective date of this Agreement or as they may be subsequently amended.

#### ARTICLE XXX. LIMITATION ON FISCAL OBLIGATIONS AND PARTIES' LIABILITY:

Notwithstanding the general powers of the Authority set forth in this Agreement, the Authority shall not incur any financial or contractual obligations unless it has already obtained sufficient funds or a binding commitment for funds to pay for the full cost of said obligations. The Authority shall specify in all contracts for purchase of goods and services that responsibility for payment is that of the Authority and shall not be the debts, liabilities or obligations of the Participants to this Agreement or any of them.

#### ARTICLE XXXI. INDEMNIFICATION:

The Authority shall indemnify, defend, and save harmless each Participant, their

officers, agents and employees, from and against any and all claims and losses whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury or death arising out of, relating to, or connected with the Authority's performance of its obligations under this Agreement.

ARTICLE XXXII. CONFLICT OF INTEREST CODE:

The Authority shall adopt a Conflict of Interest Code in accordance with the Political Reform Act (commencing with Section 81000 of the Government Code of the State.)

ARTICLE XXXIII. CERTIFICATES OF PARTICIPATION AND BONDS:

The Authority shall have power to sell or cause to be sold Certificates of Participation and to sell bonds from time to time in accordance with the provisions of the Act for the purpose of raising funds necessary to finance or refinance the Project and to carry out its powers under this Agreement.

*[Handwritten signature]*

IN WITNESS WHEREOF, the Participants have caused their names to be affixed hereto by the proper officers thereof. This Agreement shall be effective as of the date and year first written above.

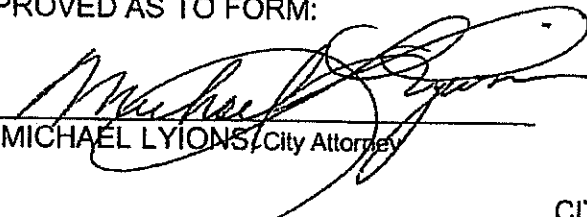
CITY OF CERES

By:   
ART deWERK, Acting City Manager

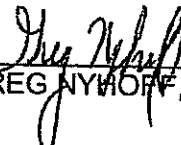
ATTEST:

By:   
CINDY HEIDORN, City Clerk


APPROVED AS TO FORM:

By:   
MICHAEL LYONS, City Attorney


CITY OF MODESTO

By:   
GREG NYHOFF, City Manager

ATTEST:

By:   
STEPHANIE LOPEZ, City Clerk  
Resolution 2011-395 September 27, 2011

APPROVED AS TO FORM:

By:   
ROLAND R. STEVENS, Assistant City Attorney

CITY OF TURLOCK

By:   
ROY WASDEN, City Manager

ATTEST:

By:   
RHONDA GREENLEE, City Clerk

APPROVED AS TO FORM:

By:   
PHAEDRA NORTON, City Attorney

**EXHIBIT "A"**

**JPA FINANCING PERCENTAGES\***

	<b>Phase 1</b>	<b>Phase 2</b>
<b>TURLOCK</b>	<b>56.0%</b>	<b>38.0%</b>
<b>CERES</b>	<b>22.0%</b>	<b>31.0%</b>
<b>MODESTO</b>	<b>22.0%</b>	<b>31.0%</b>

**\*Based on percentage of capacity**

