

**FIRST AMENDED**

**JOINT EXERCISE OF POWERS AGREEMENT**

**of the**

**SANTA CRUZ MID-COUNTY GROUNDWATER AGENCY**

**by and among**

**CENTRAL WATER DISTRICT**

**CITY OF SANTA CRUZ**

**COUNTY OF SANTA CRUZ**

**and**

**SOQUEL CREEK WATER DISTRICT**

**Effective August 10, 2021**

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## **FIRST AMENDED JOINT EXERCISE OF POWERS AGREEMENT OF THE SANTA CRUZ MID-COUNTY GROUNDWATER AGENCY**

This **First Amended Joint Exercise of Powers Agreement** is executed this 10<sup>th</sup> Day of August, 2021 (“Effective Date”), amending and superseding the **Joint Exercise of Powers Agreement** executed on March 17, 2016, by and among the Central Water District, the City of Santa Cruz, the County of Santa Cruz, and the Soquel Creek Water District, sometimes referred to herein individually as a “**Member Agency**” and collectively as the “**Member Agencies**” for the purposes of forming the Santa Cruz Mid-County Groundwater Agency (“**Agency**”) and setting forth the terms pursuant to which the Agency shall operate (“**Agreement**”). Capitalized defined terms used herein shall have the meanings given to them in Article 1 of this Agreement.

### **RECITALS**

- A. Each of the Member Agencies is a local agency, as defined by the Sustainable Groundwater Management Act of 2014 (“**SGMA**”), duly organized and existing under and by virtue of the laws of the State of California, and each Member Agency can exercise powers related to groundwater management.
- B. SGMA required the designation of a groundwater sustainability agency (“**GSA**”) by June 30, 2017, for groundwater basins designated by the California Department of Water Resources (“**DWR**”) as medium- and high-priority basins.
- C. SGMA required the adoption of a groundwater sustainability plan (“**GSP**”) by January 31, 2020, for all medium- and high-priority basins identified as being subject to critical conditions of overdraft.
- D. Each of the Member Agencies either extracts groundwater from or regulates land use activities overlying a common groundwater basin located within the mid-county coastal region of the County of Santa Cruz. The State’s official publication *California’s Groundwater* (DWR Bulletin 118) names the groundwater basin the “Santa Cruz Mid-County Basin” (hereafter “**Basin**”), identified as basin number 3-001, designated a high priority basin and classified as critically overdrafted.
- E. The Member Agencies adopted a GSP on November 21, 2019, and intend for the Agency to manage the Basin pursuant to SGMA.
- F. Under SGMA, a combination of local agencies may form a GSA through a joint powers agreement.
- G. The Member Agencies have determined that the sustainable management of the Basin pursuant to SGMA may best be achieved through the cooperation of the Member Agencies operating through a joint powers agency.
- H. The Joint Exercise of Powers Act of 2000 (Government Code sections 6500, *et seq.* (“**Act**”) authorizes the Member Agencies to create a joint powers authority, to jointly exercise any power common to the Member Agencies, and to exercise additional powers granted under the Act.
- I. The Act, including the Marks-Roos Local Bond Pooling Act of 1985 (Government Code sections 6584, *et seq.*), authorizes an entity created pursuant to the Act to issue bonds, and under certain circumstances, to purchase bonds issued by, or to make loans to, the Member Agencies for financing public capital improvements, working capital, liability and other insurance needs or projects whenever doing so results in significant public benefits, as determined by the Member Agencies. The Act further authorizes and

empowers a joint powers authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sales.

J. Based on the foregoing legal authority, the Member Agencies desire to create a joint powers authority for the purpose of taking all actions deemed necessary by the joint powers authority to ensure sustainable management of the Basin as required by SGMA.

K. The governing board of each Member Agency has determined it to be in the Member Agency's best interest and in the public interest that this Agreement be executed.

## **TERMS OF AGREEMENT**

In consideration of the mutual promises and covenants herein contained, the Member Agencies agree as follows:

### **ARTICLE 1 DEFINITIONS**

The following terms have the following meanings for purposes of this Agreement:

1.1 "Act" means the Joint Exercise of Powers Act, set forth in Chapter 5 of Division 7 of Title 1 of the Government Code, sections 6500, *et seq.*, including all laws supplemental thereto.

1.2 "Agreement" means this First Amended Joint Exercise of Powers Agreement.

1.3 "Auditor" means the Member Agency officer performing the functions of auditor of the financial affairs of the Agency appointed by the Board of Directors pursuant to Section 7.3 of this Agreement.

1.4 "Agency" means the Santa Cruz Mid-County Groundwater Agency.

1.5 "Basin" means the "Santa Cruz Mid-County Groundwater Basin" with 3-1 as the number for the consolidated basin under DWR Bulletin No. 118.

1.6 "Board of Directors" or "Board" means the governing body of the Agency as established by Article 6 of this Agreement.

1.7 "Bylaws" means the bylaws adopted by, or amended by, the Board of Directors pursuant to Article 11 of this Agreement to govern the day-to-day operations of the Agency.

1.8 "Director" and "Alternate Director" mean a director or alternate director appointed pursuant to Sections 6.3 and 6.4 of this Agreement. "Member Agency Director" is a Director or Alternate Director appointed by and representing a Member Agency pursuant to Section 6.1.1 of this Agreement.

1.9 "DWR" means the California Department of Water Resources.

1.10 "GSA" means a Groundwater Sustainability Agency as defined by SGMA.

1.11 "GSP" means a Groundwater Sustainability Plan as defined by SGMA.

1.12 “Member Agency” means each party to this Agreement that satisfies the requirements of Section 5.1 of this Agreement, including any new member agencies as may be authorized by the Board, pursuant to Section 5.2 of this Agreement.

1.13 “Officer(s)” or “Agency Officers” means the Chair, Vice Chair, Secretary, or Treasurer of the Agency to be elected or appointed by the Board of Directors pursuant to Article 7 of this Agreement.

1.14 “SGMA” means the Sustainable Groundwater Management Act.

1.15 “State” means the State of California.

## **ARTICLE 2 THE AGENCY**

2.1 Creation of a Joint Powers Authority. This Agreement creates a joint powers authority which is a public entity separate from the Member Agencies to this Agreement, known as the Santa Cruz Mid-County Groundwater Agency (“**Agency**”). Within 30 days after the Effective Date of this Agreement, the Agency shall prepare and file a notice of the Agreement with the California Secretary of State containing the information required by Government Code section 6503.5. The Agency shall also file updated Registry of Public Agencies forms with the California Secretary of State as required by Government Code section 53051.

2.2 Purpose of the Agency. Each Member Agency has in common the power to study, plan, develop, finance, acquire, construct, maintain, repair, manage, operate, control, and govern the water supply and water management within the Basin, either alone or in cooperation with other public or private non-member entities, and each is a local agency eligible to serve as a GSA within the Basin, either alone or jointly through a joint powers agreement as provided for by SGMA. The purpose of this Agency is to serve as the GSA for the Basin and to develop, adopt, and implement the GSP for the Basin pursuant to SGMA and other applicable provisions of law.

2.3 Principal Office. The principal office of the Agency shall be at the Soquel Creek Water District located at 5180 Soquel Drive, Soquel, CA 95073 ("Principal Office") or at an alternate location as designated by a simple majority vote of the Board.

## **ARTICLE 3 TERM**

This Agreement shall become effective upon execution by each of the Member Agencies and shall remain in effect until terminated pursuant to the provisions of Article 16 (Withdrawal of Member Agencies) of this Agreement.

## **ARTICLE 4 POWERS**

The Agency shall possess the power in its own name to exercise any and all common powers of its Member Agencies reasonably related to the purposes of the Agency, including but not limited to the following powers, together with such other powers as are expressly set forth in the Act and in SGMA. For purposes of Government Code section 6509, the powers of the Agency shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the County of Santa Cruz, and in

the event of the withdrawal of the County of Santa Cruz as a Member Agency under this Agreement, then the manner of exercising the Agency's powers shall be those restrictions imposed on the City of Santa Cruz.

- 4.1 To exercise all powers afforded to a GSA pursuant to and as permitted by SGMA.
- 4.2 To develop, adopt and implement the GSP pursuant to SGMA.
- 4.3 To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Agency and adoption and implementation of the GSP.
- 4.4 To obtain rights, permits and other authorizations for or pertaining to implementation of the GSP.
- 4.5 To perform other ancillary tasks relating to the operation of the Agency pursuant to SGMA, including without limitation, environmental review, engineering, and design.
- 4.6 To make and enter into all contracts necessary to the full exercise of the Agency's power.
- 4.7 To employ, designate or otherwise contract for the services of agents, officers, employees, attorneys, engineers, planners, financial consultants, technical specialists, advisors, and independent contractors.
- 4.8 To exercise jointly the common powers of the Member Agencies, as directed by the Board, in developing and implementing a GSP for the Basin.
- 4.9 To investigate legislation and proposed legislation affecting the Basin and to make appearances regarding such matters.
- 4.10 To cooperate and to act in conjunction and contract with the United States, the State of California or any agency thereof, counties, municipalities, public and private corporations of any kind (including without limitation, investor-owned utilities), and individuals, or any of them, for any and all purposes necessary or convenient for the full exercise of the powers of the Agency.
- 4.11 To incur debts, liabilities or obligations, to issue bonds, notes, certificates of participation, guarantees, equipment leases, reimbursement obligations and other indebtedness, and, to the extent provided for in a duly adopted Agency to impose assessments, groundwater extraction fees or other charges, and other means of financing the Agency as provided in Chapter 8 of SGMA commencing at Section 10730 of the Water Code.
- 4.12 To collect and monitor data on the extraction of groundwater from, and the quality of groundwater in, the Basin.
- 4.13 To establish and administer a conjunctive use program for the purposes of maintaining sustainable yields in the Basin consistent with the requirements of SGMA.
- 4.14 To exchange and distribute water.
- 4.15 To regulate groundwater extractions as permitted by SGMA.
- 4.16 To impose groundwater extraction fees as permitted by SGMA.



4.17 To spread, sink and inject water into the Basin.

4.18 To store, transport, recapture, recycle, purify, treat or otherwise manage and control water for beneficial use.

4.19 To apply for, accept and receive licenses, permits, water rights, approvals, agreements, grants, loans, contributions, donations or other aid from any agency of the United States, the State of California, or other public agencies or private persons or entities necessary for the Agency's purposes.

4.20 To develop and facilitate market-based solutions for the use and management of water rights.

4.21 To acquire property and other assets by grant, lease, purchase, bequest, devise, gift or eminent domain, and to hold, enjoy, lease or sell, or otherwise dispose of, property, including real property, water rights, and personal property, necessary for the full exercise of the Agency's powers.

4.22 To sue and be sued in its own name.

4.23 To provide for the prosecution of, defense of, or other participation in actions or proceedings at law or in public hearings in which the Member Agencies, pursuant to this Agreement, may have an interest and may employ counsel and other expert assistance for these purposes.

4.24 To exercise the common powers of its Member Agencies to develop, collect, provide, and disseminate information that furthers the purposes of the Agency, including but not limited to the operation of the Agency and adoption and implementation of the GSP to the Member Agencies, legislative, administrative, and judicial bodies, as well the public generally.

4.25 To accumulate operating and reserve funds for the purposes herein stated.

4.26 To invest money that is not required for the immediate necessities of the Agency, as the Agency determines is advisable, in the same manner and upon the same conditions as Member Agencies, pursuant to Government Code section 53601, as it now exists or may hereafter be amended.

4.27 To undertake any investigations, studies, and matters of general administration.

4.28 To perform all other acts necessary or proper to carry out fully the purposes of this Agreement.

## **ARTICLE 5 MEMBERSHIP**

5.1 Member Agencies. The Member Agencies shall be the Central Water District, the City of Santa Cruz, the County of Santa Cruz, and the Soquel Creek Water District, as long as they have not, pursuant to the provisions hereof, withdrawn from this Agreement.

5.2 New Member Agencies. Any public agency (as defined by the Act) that is not a Member Agency on the Effective Date of this Agreement may become a Member Agency upon: (a) the approval of the Board of Directors by a supermajority of at least seventy-five (75%) of the votes held among all Directors as specified in Article 9 (Member Voting); (b) payment of a pro rata share of all previously incurred costs that the Board of Directors determines have resulted in benefit to the public agency, and are

appropriate for assessment on the public agency; and (c) execution of a written agreement subjecting the public agency to the terms and conditions of this Agreement.

## **ARTICLE 6 BOARD OF DIRECTORS**

6.1 Formation of the Board of Directors. The Agency shall be governed by a Board of Directors (“**Board**”). The Board shall consist of eleven (11) Directors consisting of the following representatives who shall be appointed in the manner set forth in Section 6.3:

6.1.1 Two representatives (referred to herein as “Member Agency Directors”), appointed by the governing board of each of the following Member Agencies: the Central Water District, the City of Santa Cruz, the County of Santa Cruz, and the Soquel Creek Water District.

6.1.2 Three representatives of private well owners within the boundaries of the Agency (referred to herein as “Private Well Owner Directors”).

6.2 Duties of the Board of Directors. The business and affairs of the Agency, and all of its powers, including without limitation all powers set forth in Article 4 (Powers), are reserved to and shall be exercised by and through the Board of Directors, except as may be expressly delegated to the staff or others pursuant to this Agreement, Bylaws, or by specific action of the Board of Directors.

6.3 Appointment of Directors. The Directors shall be appointed as follows:

6.3.1 The two representatives from the Central Water District shall be appointed by the Central Water District Board of Directors.

6.3.2 The two representatives from the City of Santa Cruz shall be appointed by the City of Santa Cruz City Council.

6.3.3 The two representatives from the County of Santa Cruz shall be appointed by the County of Santa Cruz Board of Supervisors.

6.3.4 The two representatives from the Soquel Creek Water District shall be appointed by the Soquel Creek Water District Board of Directors.

6.3.5 The three representatives of private well owners shall be appointed by majority vote of the eight Member Agency Directors. The procedures for nominating the private well owners shall be set forth in the Bylaws.

6.4 Alternate Directors. Each Member Agency may have one Alternate to act as a substitute Director for either of the Member Agency’s Directors. One Alternate shall also be appointed to act as a substitute Director for any of the three Directors representing private well owners. All Alternates shall be appointed in the same manner as set forth in Section 6.3. Alternate Directors shall have no vote, and shall not participate in any discussions or deliberations of the Board unless appearing as a substitute for a Director due to absence or conflict of interest. If the Director is not present, or if the Director has a conflict of interest which precludes participation by the Director in any decision-making process of the Board, the Alternate Director appointed to act in their place shall assume all rights of the Director, and shall have the authority to act in their absence, including casting votes on matters before the Board. Alternates are strongly encouraged to attend all Board meetings and stay informed on current issues before the Board.

## 6.5 Term of Appointment and Removal.

6.5.1 Term of Appointment. Each Member Agency's Directors and Alternate Director shall be appointed by that Member's governing body to serve for a term established by the Member Agency. A Member Agency's Director or Alternate Director may be removed during their term or reappointed for multiple terms at the pleasure of the Member that appointed them. The term of a Director representing private well owners shall be set forth in the Bylaws. A Director representing private well owners may be removed or reappointed in the same manner as they were appointed as set forth in Section 6.3.

6.5.2 Removal. A Member Agency's Director or Alternate Director may be removed during their term at the pleasure of the Member Agency that appointed them. No Member Agency Director or Alternate Director may be removed in any other manner, including by the affirmative vote of the other Directors. A Director or Alternate Director representing private well owners may be removed by majority vote of the Member Agency Directors.

6.6 Vacancies. A vacancy on the Board of Directors shall occur when a Director resigns or at the end of the Director's term as set forth in Section 6.5.

6.6.1 Member Agency Directors: For Member Agency Directors, a vacancy shall also occur when they are removed by their appointing Member Agency. Upon the vacancy of a Director, the Alternate Director shall serve as Director until a new Director is appointed as set forth in Section 6.3 unless the Alternate is already serving as a substitute Director in the event of a prior vacancy, in which case, the seat shall remain vacant until a replacement Director is appointed as set forth in Section 6.3. Members shall provide notice of any changes in Director or Alternate Director positions, including the effective date of any change, to the Board of Directors or its designee in writing and signed by an authorized representative of the Member Agency. Any appointment to fill a vacancy shall be to serve for the remainder of the term of the departing Director.

6.6.2 Private Well Owner Directors: Upon the vacancy of a Private Well Owner Director, the Alternate Director, if willing, shall fill the vacancy and serve for the remainder of the term of the departing Director and a new Alternate Director shall be appointed as set forth in Section 6.3. If the Alternate Director does not wish to fill the vacancy, a new Director shall be appointed as set forth in Section 6.3. In the event of multiple vacancies, Directors shall be appointed as set forth in Section 6.3.

## **ARTICLE 7 OFFICERS**

7.1 Officers. Officers of the Agency shall be a Chair, Vice Chair, Secretary, and Treasurer.

7.2 Elected Officers.

7.2.1 Elected Officers are the Chair, Vice Chair, and Secretary.

7.2.2 Elected Officers shall be elected annually by, and serve at the pleasure of, the Board of Directors. Officers shall be elected at the first Board meeting following January 1st of each year, or as duly continued by the Board. An Officer may serve for multiple consecutive terms, with no term limit. Any Officer may resign at any time upon written notice to the Board and may be removed and replaced by a simple majority vote of the Board.

7.2.3. The responsibilities and duties of each Elected Officer is set forth in the Bylaws.

7.3 Appointment of Treasurer and Auditor; Duties. The Treasurer and Auditor shall be appointed by the Board and shall perform such duties and responsibilities as specified in Sections 6505.5 and 6505.6 of the Act.

## **ARTICLE 8 BOARD OF DIRECTORS MEETINGS**

8.1 Initial Meeting. The initial meeting of the Board of Directors was held in the County of Santa Cruz, California, on March 17, 2016.

8.2 Time and Place. The Board of Directors shall establish the meeting schedule on an annual basis and place set by the Board within the jurisdictional boundaries of one or more of the Member Agencies, and at such other times as may be determined by the Board.

8.3 Special Meetings. Special meetings of the Board of Directors may be called by the Chair or by a simple majority of Directors, in accordance with the provisions of Government Code section 54956.

8.4 Conduct. All meetings of the Board of Directors, including special meetings, shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). The Board may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by applicable law.

8.5 Local Conflict of Interest Code. The Board of Directors adopted a local conflict of interest code pursuant to the provisions of the Political Reform Act of 1974 (Government Code sections 81000, *et seq.*).

## **ARTICLE 9 BOARD OF DIRECTORS VOTING**

9.1 Quorum. A quorum of any meeting of the Board of Directors shall consist of an absolute majority of Directors plus one Director. In the absence of a quorum, any meeting of the Directors may be adjourned by a vote of the simple majority of Directors present, but no other business may be transacted. For purposes of this Article, a Director shall be deemed present if the Director appears at the meeting in person or participates telephonically or otherwise electronically provided that the telephone or electronic appearance is consistent with the requirements of the Ralph M. Brown Act.

9.2 Director Votes. Voting by the Board of Directors shall be made on the basis of one vote for each Director. A Director, or an Alternate Director when acting in the absence of their Director, may vote on all matters of Agency business unless disqualified because of a conflict of interest pursuant to California law or the local conflict of interest code adopted by the Board of Directors.

9.3 Affirmative Decisions of the Board of Directors. Except as otherwise specified in this Agreement, all affirmative decisions of the Board of Directors shall require the affirmative vote of a simple majority of all appointed Directors participating in voting on a matter of Agency business, provided that if a Director is disqualified from voting on a matter before the Board because of a conflict of interest, that Director shall be excluded from the calculation of the total number of Directors that constitute a majority. Notwithstanding the foregoing, a unanimous vote of all Member Agency Directors participating in voting shall be required to approve any of the following: (i) the annual budget; (ii) any expenditure that is estimated

to cost \$100,000 or more that is not included in the Agency's annual budget (iii) the GSP for the Basin or any amendment thereto; (iv) the levying of assessments or fees; (v) issuance of indebtedness; or (vi) any stipulation to resolve litigation concerning groundwater rights within or groundwater management for the Basin.

**ARTICLE 10**  
**AGENCY ADMINISTRATION, MANAGEMENT AND OPERATION**

The Board of Directors may select and implement an approach to Agency administration and management that is appropriate to the circumstances and adapted to the Agency's needs as they may evolve over time. Details of the Board's decision on Agency administration, management and operation shall be incorporated into the Agency's bylaws and reviewed and revised as needed using the established process for revising the Agency's bylaws.

**ARTICLE 11**  
**BYLAWS**

The Board of Directors shall amend the Bylaws of the Agency as needed to govern the day-to-day operations of the Agency.

**ARTICLE 12**  
**COMMITTEES**

12.1 Appointments. The Board of Directors may from time to time appoint one or more advisory committees or establish standing or ad hoc committees or working groups to assist in carrying out the purposes and objectives of the Agency. The Board shall determine the purpose and need for such committees and the necessary qualifications for individuals appointed to them. The Bylaws Article 5 provides further specifications on Committees.

12.2 Director. Each committee shall include a Director as the chair thereof. Other members of each committee may be constituted by such individuals approved by the Board of Directors for participation on the committee.

12.3 Authority. No committee or participant on such committee shall have any authority to act on behalf of the Agency except as duly authorized by the Board.

**ARTICLE 13**  
**ACCOUNTING PRACTICES**

13.1 General. The Board of Directors shall establish and maintain such funds and accounts as may be required by generally accepted public agency accounting practices. The Agency shall maintain strict accountability of all funds and a report of all receipts and disbursements of the Agency.

13.2 Fiscal Year. Unless the Board of Directors decides otherwise, the fiscal year for the Agency shall be from July 1 to June 30.

**ARTICLE 14**  
**BUDGET AND EXPENSES**

14.1 Budget. Prior to the commencement of each fiscal year, the Board shall adopt a budget for the Agency for the ensuing fiscal year no later than June 30<sup>th</sup>. In the event that a budget is not so approved,

the prior year's budget shall be deemed approved for the ensuing fiscal year until such time as a new budget is adopted, and any groundwater extraction fee or assessment(s) of contributions of Member Agencies, or both, approved by the Board during the prior fiscal year shall again be assessed in the same amount and terms for the ensuing fiscal year.

14.2 Agency Funding and Contributions. For the purpose of funding the expenses and ongoing operations of the Agency, the Board of Directors shall maintain a funding account in connection with the annual budget process. The Board of Directors may fund the Agency and the GSP as provided in Chapter 8 of SGMA, commencing with Section 10730 of the Water Code. The Board from time to time will review the proportional share of contributions by the Member Agencies, and issue assessments for contributions in the amount and frequency determined necessary. Such Member Agency contributions shall be invoiced to each Member Agency within 30 days of the beginning of the fiscal year. The invoice shall be due and payable within 30 days of the invoice date.

14.3 Return of Contributions. In accordance with Government Code section 6512.1, repayment or return to the Member Agencies of all or any part of any contributions made by Member Agencies and any revenues by the Agency may be directed by the Board of Directors at such time and upon such terms as the Board of Directors may decide; provided that (1) any distributions shall be made in proportion to the contributions paid by each Member Agency to the Agency, and (2) any capital contribution paid by a Member Agency voluntarily, and without obligation to make such capital contribution pursuant to Section 14.2, shall be returned to the contributing Member Agency, together with accrued interests at the annual rate published as the yield of the Local Agency Investment Fund administered by the California State Treasurer, before any other return of contributions to the Member Agencies is made. The Agency shall hold title to all funds and property acquired by the Agency during the term of this Agreement.

14.4 Issuance of Indebtedness. The Agency may issue bonds, notes or other forms of indebtedness, as permitted under Section 4.11, provided such issuance be approved at a meeting of the Board of Directors by unanimous vote of the Member Agency Directors as specified in Section 9.3.

## **ARTICLE 15 LIABILITIES**

15.1 Liability. In accordance with Government Code section 6507, the debt, liabilities and obligations of the Agency shall be the debts, liabilities and obligations of the Agency alone, and not the Member Agencies.

15.2 Indemnity. Funds of the Agency may be used to defend, indemnify, and hold harmless the Agency, each Member Agency, each Director, and any officers, agents and employees of the Agency for their actions taken within the course and scope of their duties while acting on behalf of the Agency. Other than for gross negligence or intentional acts, to the fullest extent permitted by law, the Agency agrees to save, indemnify, defend and hold harmless each Member Agency from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are in any way attributable, in whole or in part, to negligent acts or omissions of the Agency or its employees, officers or agents or the employees, officers or agents of any Member Agency, while acting within the course and scope of a Member Agency relationship with the Agency.

## **ARTICLE 16 WITHDRAWAL OF MEMBER AGENCY**

16.1 Unilateral Withdrawal. Subject to the Dispute Resolution provisions set forth in Section 17.9, a Member Agency may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon 30 days written notice to the Board of Directors or its designee.

16.2 Rescission or Termination of Agency. This Agreement may be rescinded and the Agency terminated by unanimous written consent of all Member Agencies, except during the outstanding term of any Agency indebtedness.

16.3 Effect of Withdrawal or Termination. Upon termination of this Agreement or unilateral withdrawal, a Member Agency shall remain obligated to pay its share of all debts, liabilities and obligations of the Agency required of the Member Agency pursuant to terms of this Agreement, and that were incurred or accrued prior to the effective date of such termination or withdrawal, including without limitation those debts, liabilities and obligations pursuant to Sections 4.11 and 14.4. Any Member Agency who withdraws from the Agency shall have no right to participate in the business and affairs of the Agency or to exercise any rights of a Member Agency under this Agreement or the Act, but shall continue to share in distributions from the Agency on the same basis as if such Member Agency had not withdrawn, provided that a Member Agency that has withdrawn from the Agency shall not receive distributions in excess of the contributions made to the Agency while a Member Agency. The right to share in distributions granted under this Section 16.3 shall be in lieu of any right the withdrawn Member Agency may have to receive a distribution or payment of the fair value of the Member Agency's interest in the Agency.

16.4 Return of Contribution. Upon termination of this Agreement, any surplus money on-hand shall be returned to the Member Agencies in proportion to their contributions made. The Board of Directors shall first offer any property, works, rights and interests of the Agency for sale to the Member Agencies on terms and conditions determined by the Board of Directors. If no such sale to Member Agencies is consummated, the Board of Directors shall offer the property, works, rights, and interest of the Agency for sale to any non-member for good and adequate consideration. The net proceeds from any sale shall be distributed among the Member Agencies in proportion to their contributions made.

## **ARTICLE 17 MISCELLANEOUS PROVISIONS**

17.1 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination by the Agency or any of its Member Agencies that any action shall be undertaken, or that any unconditional or irretrievable commitment of resources shall be made, until such time as the required compliance with all local, state, or federal laws, including without limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

17.2 Notices. Notices to a Director or Member Agency hereunder shall be sufficient if delivered to the respective Director or clerk of the Member Agency and addressed to the Director or clerk of the Member Agency. Delivery may be accomplished by U.S. Postal Service, private mail service or electronic mail.

17.3 Amendments to Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by all of the Member Agencies.

17.4 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Member Agencies. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

17.5 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with the Act, this Agreement shall terminate.

17.6 Withdrawal by Operation of Law. Should the participation of any Member Agency to this Agreement be decided by the courts to be illegal or in excess of that Member Agency's authority or in conflict with any law, the validity of the Agreement as to the remaining Member Agencies shall not be affected thereby.

17.7 Assignment. The rights and duties of the Member Agencies may not be assigned or delegated without the written consent of all other Member Agencies. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

17.8 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Member Agencies.

17.9 Dispute Resolution. In the event that any dispute arises among the Member Agencies relating to (i) this Agreement, (ii) the rights and obligations arising from this Agreement, or (iii) a Member Agency proposing to withdraw from membership in the Agency, the aggrieved Member Agency or Member Agency proposing to withdraw from membership shall provide written notice to the other Member Agencies of the controversy or proposal to withdraw from membership. Within thirty (30) days thereafter, the Member Agencies shall attempt in good faith to resolve the controversy through informal means. If the Member Agencies cannot agree upon a resolution of the controversy within thirty (30) days from the providing of written notice specified above, the dispute shall be submitted to mediation prior to commencement of any legal action or prior to withdraw of a Member Agency proposing to withdraw from membership. The mediation shall be no less than a full day (unless agreed otherwise among the Member Agencies) and the cost of mediation shall be paid in equal proportion among the Member Agencies. The mediator shall be either voluntarily agreed to or appointed by the Superior Court upon a suit and motion for appointment of a neutral mediator. Upon completion of mediation, if the controversy has not been resolved, any Member Agency may exercise all rights to bring a legal action relating to the controversy or (except where such controversy relates to withdrawal of a Member Agency's obligations upon withdrawal) withdraw from membership as otherwise authorized pursuant to this Agreement.

17.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

17.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

17.12 Member Agency Authorization. The legislative bodies of the Member Agencies have each authorized execution of this Agreement, as evidenced by their respective signatures below.



IN WITNESS WHEREOF, the Member Agencies hereto have executed this Agreement by authorized officials thereof.

CENTRAL WATER DISTRICT

By: Robert Postle  
DocuSigned by:  
C9347807341D42C...

Date: 8/31/2021

Name: Robert Postle

Title: Board President

Approved As To Form:

By: Robert Haight  
DocuSigned by:  
AC96DBA35785460...

Title: District Counsel

CITY OF SANTA CRUZ

By: Martin Bernal  
DocuSigned by:  
549E80D98957470...

Date: 8/17/2021

Name: Martín Bernal

Title: City Manager

Approved As To Form:

By: Anthony Condotti  
DocuSigned by:  
0454C2D2392940C...

Title: City Attorney

COUNTY OF SANTA CRUZ

By: Carlos Palacios  
DocuSigned by:  
08C67F9B46304A2...

Date: 8/17/2021

Name: Carlos Palacios

Title: County Administrative Officer

Approved As To From:

By: Jason Heath  
DocuSigned by:  
AF767CF913B5419... 7/22/2021 (AMS# 11135)

Title: County Counsel

SOQUEL CREEK WATER DISTRICT

By: Rachel Lather  
DocuSigned by:  
B53558593974490...

Date: 9/13/2021

Name: Rachél Lather

Title: Board President

Approved As To Form:

By: Josli Nelson  
DocuSigned by:  
9A14B32C039046B...

Title: District Counsel