CITY OF WOODLAND
300 FIRST STREET
WOODLAND, CALIFORNIA

CITY COUNCIL
SPECIAL MEETING/STUDY SESSION AGENDA

February 26, 2013

5:00 P.M.

A. CALL TO ORDER

B. CLOSED SESSION

C. PLEDGE OF ALLEGIANCE

D. COMMUNICATIONS-PUBLIC COMMENT

This an opportunity for the public to speak to the Council on any item other than those listed for public hearing on this agenda. Speakers are requested to use the microphone in front of the Council and to begin by stating their name, whether they reside in Woodland and the name of the organization they represent if any. The Mayor may impose a time limit on any speaker depending on the number of people wanting to speak and time available for the rest of the agenda. In the event comments are related to an item scheduled on the agenda, speakers may be required to wait to make their comments until that item is considered.

E. COMMUNICATIONS–COUNCIL/STAFF STATEMENTS AND REQUESTS

This is an opportunity for the Council Members and Staff to make comments and announcements, to express concerns, or to request Council's consideration of any items a Council Member would like to have discussed at a future Council meeting.

F. CONSENT CALENDAR

1. Authorize City Manager to Execute a Master Lease-Purchase Agreement with Oshkosh Capital
   Recommendation: that the City Council Approve Resolution No. _____ to authorize the City Manager to execute a Master Lease-Purchase

Agreement with Oshkosh Capital for lease of three fire apparatus, for a ten year term, in an amount not to exceed $2.3 million principal costs

G. REPORTS OF THE CITY MANAGER

2. Approve the Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement
Recommendation: that the City Council Approve the Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement

H. ADJOURN

I declare under penalty of perjury that the foregoing Agenda for the special/study session of the City Council of the City of Woodland scheduled for February 26, 2013 was posted on February 22, 2013, in the outside display case at City Hall, 300 First Street, Woodland, CA, and was available to the public during normal business hours.

____
Ana B. Gonzalez
City Clerk

City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: February 26, 2013

SUBJECT: Authorize City Manager to Execute a Master Lease-Purchase Agreement with Oshkosh Capital

Recommendation for Action

Staff recommends that the City Council approve Resolution _____ to authorize the City Manager to execute a Master Lease-Purchase Agreement with Oshkosh Capital for lease of three fire apparatus, for a ten year-term, in an amount not to exceed $2.3 million principal costs.

Fiscal Impact

Total principal amount of the lease is currently estimated at an amount not to exceed $2.3 million. The lease will be amortized over a ten year period (which is the same as the useful life the equipment being leased), and interest rates are approximately 2.3% to 2.4%. The annual lease payment will be approximately $256,000, will begin one year from execution of the lease, and will be paid from the General Fund. This lease payment has been included in the long-term General Fund forecasts.

Background

In 2002, the City leased several fire apparatus over a ten year period with a total annual lease payment of $207,000. The equipment that was leased and built at that time has reached the end of its useful life and has deteriorated significantly. The equipment spends a large portion of its time being serviced and repaired in the shop and is frequently unavailable for use.

The leased equipment proposed is one 105’ Velocity HD Aerial truck and two Pierce 200 GPM Velocity Pumpers. The estimated total cost of this equipment is approximately $2,300,000.

Discussion

The City Council previously approved a Vehicle Fleet Management Policy allowing for the lease purchase of vehicles with a long service life, minimum initial cost of $80,000 and/or situations where the City may benefit from alternative financing strategies. In many cases, a lease purchase makes financial sense and helps the City from a cash flow standpoint by avoiding a significant expenditure of funds.

Fire and Finance staff evaluated both equipment purchase quotes as well as leasing terms through several various organizations. The proposed equipment purchase is for the apparatus to be built with Pierce, and for the financing of the lease to occur with Oshkosh Capital.

Once the lease is executed, Pierce can begin construction of the various apparatus; this process can take anywhere from six months to one year, depending upon other orders that may be ahead of the City with Pierce. The lease would commence upon signing the contract with Pierce, and the first lease payment would be required one year following that date.

Sample lease documentation is attached to this communication. Final documents are expected to be in a substantially similar format. Additionally, the City will need to update the previous quote received from Oshkosh Capital for lease terms, but minor changes in interest rate have a very minimal impact on the total lease cost and annual lease payments.

Conclusion

Staff recommends that the City Council approve Resolution _____ to authorize the City Manager to execute a Master Lease-Purchase Agreement with Oshkosh Capital for lease of three fire apparatus in an amount not to exceed $2.3 million principal costs.

Prepared by: Kimberly McKinney
Finance Officer

____
Paul Navazio
City Manager

Attachment: Resolution
Sample Lease Documents

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION AND DELIVERY OF MASTER LEASE PURCHASE AGREEMENT WITH OSHKOSH CAPITAL

Municipality/Lessee: City of Woodland
Principal Amount Expected To Be Financed: $2,300,00

WHEREAS, the City of Woodland is a political subdivision of the State in which Municipality is located (the "State") and is duly organized and existing pursuant to the Constitution and laws of the State.

WHEREAS, pursuant to applicable law, the City Council of the City of Woodland is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the City.

WHEREAS, the City Council hereby finds and determines that the execution of one or more Master Lease-Purchase Agreements ("Leases") in the principal amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the City.

WHEREAS, Oshkosh Capital ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Resolved by the City Council of the City of Woodland:

Section 1. The City Manager ("Authorized Representative") acting on behalf of the City, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the City Council, which document is available for public inspection at the office of the City. The Authorized Representative acting on behalf of the City is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by the Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the City to execute and deliver agreements and documents relating to the Leases on behalf of the City.

Section 3. The aggregate original principal amount of the Leases shall not exceed the amount stated above and shall bear interest as set forth in the Leases and the Leases shall contain such options to purchase by the City as set forth therein.

Section 4. The City's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the City's obligations under the Leases shall not constitute general obligations of the City or indebtedness under the Constitution or laws of the State.

Section 5. As to each Lease, the City reasonably anticipates to issue more than $10,000,000 of tax-exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the fiscal year in which each such Lease is issued and hereby designates each Lease as a qualified tax-exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 6. This resolution shall take effect immediately upon its adoption and approval.

PASSED, APPROVED, AND ADOPTED THIS ______ DAY OF _______________, 2013.

STATE OF CALIFORNIA
COUNTY OF YOLO ss.
CITY OF WOODLAND

I, ________________________________, City Clerk of the City of Woodland, County of Yolo, State of California do hereby certify that the foregoing Resolution No. ___________ was regularly adopted by the City Council of said City of Woodland at a regular meeting of said council held on the __________ day of _______________, 2013, by the following vote:

AYES:	Council members:	________________________________
NOES:	Council members:	________________________________
ABSENT:	Council members:	________________________________
ABSTAIN:	Council members:	________________________________

____
Mayor, Marlin ("Skip") Davies

Attest:

______________________________________,
City Clerk, Ana B. Gonzalez

SAMPLE

MASTER LEASE – PURCHASE AGREEMENT

Dated as of «SystemDate»

This Master Lease-Purchase Agreement together with all addenda, riders and attachments hereto, as the same may from time to time be amended, modified or supplemented ("Master Lease") is made and entered by and between Oshkosh Capital ("Lessor") and the Lessee identified below ("Lessee").

LESSEE: «LesseeName»

1. **LEASE OF EQUIPMENT**. Subject to the terms and conditions of this Master Lease, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, all Equipment described in each Schedule signed from time to time by Lessee and Lessor.

2. **CERTAIN DEFINITIONS.** All terms defined in the Lease are equally applicable to both the singular and plural form of such terms. (a) "Schedule" means each Lease Schedule signed and delivered by Lessee and Lessor, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented. Lessee and Lessor agree that each Schedule (except as expressly provided in said Schedule) incorporates by reference all of the terms and conditions of the Master Lease. (b) "Lease" means each Schedule and this Master Lease as incorporated into said Schedule. (c) "Equipment" means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto. (d) "Lien" means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person.

3. **LEASE TERM**. The term of the lease of the Equipment described in each Lease ("Lease Term") commences on the first date any of such Equipment is accepted by Lessee pursuant to Section 5 hereof and, unless earlier terminated as expressly provided in the Lease, continues until Lessee's payment and performance in full of all of Lessee's obligations under the Lease.

4. **RENT PAYMENTS**.

4.1 For each Lease, Lessee agrees to pay to Lessor the rent payments in the amounts and at the times as set forth in the Schedule A-1 attached to the Schedule ("Rent Payments"). A portion of each Rent Payment is paid as and represents the payment of interest as set forth in the Schedule A-1. Rent Payments will be payable for the Lease Term in U.S. dollars, without notice or demand at the office of Lessor (or such other place as Lessor may designate from time to time in writing).

4.2 If Lessor receives any payment from Lessee after the due date, Lessee shall pay Lessor on demand as a late charge five per cent (5%) of such overdue amount, limited, however, to the maximum amount allowed by law.

4.3 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6 HEREOF OR IN ANY WRITTEN MODIFICATION TO THE LEASE SIGNED BY LESSOR, THE OBLIGATION TO PAY RENT PAYMENTS UNDER EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

5. **DELIVERY; ACCEPTANCE; FUNDING CONDITIONS**.

5.1 Lessee shall arrange for the transportation, delivery and installation of all Equipment to the location specified in the Schedule (“Location”) by Equipment suppliers (“Suppliers”) selected by Lessee. Lessee shall pay all costs related thereto unless Lessor otherwise agrees to pay such costs as stated in the Schedule.

5.2 Lessee shall accept Equipment as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor the applicable Schedule. If Lessee signs and delivers a Schedule and if all Funding Conditions have been satisfied in full, then Lessor will pay or cause to be paid the costs of such Equipment as stated in the Schedule (“Purchase Price”) to the applicable Supplier.

5.3 Lessor shall have no obligation to pay any Purchase Price unless all reasonable conditions established by Lessor (“Funding Conditions”) have been satisfied, including, without limitation, the following: (a) Lessee has signed and delivered the Schedule and its Schedule A-1; (b) no Event of Default shall have occurred and be continuing; (c) no material adverse change shall have occurred in the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder (collectively, the “Code”); (d) no material adverse change shall have occurred in the financial condition of Lessee or any Supplier; (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (except Lessor’s Liens); (f) all representations of Lessee in the Lease remain true, accurate and complete; and (g) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage required by the Lease, (2) an opinion of Lessee’s counsel; (3) reasonably detailed invoices for the Equipment; (4) Uniform Commercial Code (UCC) financing statements; (5) copies of resolutions by Lessee’s governing body, duly authorizing the Lease and incumbency certificates for the person(s) who will sign the Lease; (6) such documents and certificates relating to the tax-exempt interest payable under the Lease (including, without limitation, IRS Form 8038G or 8038GC) as Lessor may request; and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

6. **TERMINATION FOR GOVERNMENTAL NON-APPROPRIATIONS**.

6.1 For each Lease, Lessee represents and warrants: that it has appropriated and budgeted the necessary funds to make all Rent Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; and that it intends to make Rent Payments for the full Lease Term as scheduled on the applicable Schedule A-1 so long as funds are appropriated in each fiscal year by its governing body. Lessee reasonably believes that moneys in an amount sufficient to make all Rent Payments can and will lawfully be appropriated and made available therefor. All Rent Payments shall be payable out of the general funds of Lessee or out of other funds legally available therefor. Lessor agrees that the Leases will not be general obligations of Lessee and that the Leases shall not constitute pledges of either the full faith and credit of Lessee or the taxing power of Lessee.

6.2 If Lessee’s governing body fails to appropriate sufficient funds in any fiscal year for Rent Payments or other payments due under a Lease and if other funds are not available for such payments, then a “Non-Appropriation Event” shall be deemed to have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor immediate notice of such Non-Appropriation Event and provide written evidence of such failure by Lessee’s governing body; (b) on the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the affected Lease, at Lessee’s sole expense, in accordance with Section 21 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty or expense to Lessee, provided, that Lessee shall pay all Rent Payments and other amounts payable under the affected Lease for which funds shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment under this Section 6.2. “Return Date” means the last day of the fiscal year for which appropriations were made for the Rent Payments due under a Lease.

7. NO WARRANTY BY LESSOR. **The Equipment is sold “AS IS”. LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT. LESSOR DOES NOT REPRESENT THE MANUFACTURER, OWNER, OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE’S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**

OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT OR THIS MASTER LEASE – LEASE PURCHASE AGREEMENT. NEITHER THE MANUFACTURER, THE DEALER, NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE DEALER OR MANUFACTURER, IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term, Lessor hereby assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor in accordance with Lessee's specifications from Suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or Supplier or any representative of said parties shall not be binding upon Lessor.

8. **TITLE; SECURITY INTEREST**.

8.1 Upon Lessee's acceptance of any Equipment under its Lease, title to the Equipment shall vest in Lessee, subject to Lessor's security interest therein and all of Lessor's other rights under such Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2 As collateral security for the Secured Obligations, Lessee hereby grants to Lessor a first priority security interest in any and all of the Equipment (now existing or hereafter acquired) and any and all proceeds thereof. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code (UCC) financing statements and any amendments thereto.

8.3 "Secured Obligations" means Lessee's obligations to pay all Rent Payments and all other amounts due and payable under all present and future Leases and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due, or existing or hereafter arising) of Lessee under all present and future Leases.

9. **PERSONAL PROPERTY**. All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

10. **MAINTENANCE AND OPERATION**. Lessee agrees it shall, at its sole expense: (a) repair and maintain all Equipment in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; and (b) use and operate all Equipment in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements, and comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement by a party reasonably satisfactory to Lessor. No maintenance or other service for any Equipment will be provided by Lessor. Lessee will not make any alterations, additions or improvements "Improvements") to any Equipment without Lessor's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of such Equipment, but any such Improvements not removed prior to the termination of the applicable Lease shall automatically become part of the Equipment.

11. **LOCATION; INSPECTION**. Equipment will not be removed from, or if Equipment is rolling stock its permanent base will not be changed from, the Location without Lessor's prior written consent which will not be unreasonably withheld. Upon reasonable notice to Lessee, Lessor may enter the Location or elsewhere during normal business hours to inspect the Equipment.

12. **LIENS, SUBLEASES AND TAXES**.

12.1 Lessee shall keep all Equipment free and clear of all Liens except those Liens created under its Lease. Lessee shall not sublet or lend any Equipment or permit it to be used by anyone other than Lessee or Lessee's employees.

12.2 Lessee shall pay when due all Taxes which may now or hereafter be imposed upon any Equipment or its ownership, leasing, rental, sale, purchase, possession or use, upon any Lease or upon any Rent Payments or any other payments due under any Lease. If Lessee fails to pay such Taxes when due, Lessor shall have the right, but not the obligation, to pay such Taxes. If Lessor pays any such Taxes, then Lessee shall, upon demand, immediately reimburse Lessor therefor. "Taxes" means present and future taxes, levies, duties, assessments or other governmental charges that are not based on the net income of Lessor, whether they are assessed to or payable by Lessee or Lessor, including, without limitation (a) sales, use, excise, licensing, registration, titling, gross receipts, stamp and personal property taxes, and (b) interest, penalties or fines on any of the foregoing.

13. **RISK OF LOSS.**

13.1 Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("Casualty Loss"). No Casualty Loss to any Equipment shall relieve Lessee from the obligation to make any Rent Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 13.

13.2 If a Casualty Loss occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

13.3 If Lessor determines that any item of Equipment has suffered a Casualty Loss beyond repair ("Lost Equipment"), then Lessee shall either: (a) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens (except Lessor's Liens) and deliver to Lessor a bill of sale covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease; or (b) on the next scheduled Rent Payment date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rent Payment due on such date plus (ii) an amount equal to the applicable Termination Value set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Rent Payment and Termination Value to be paid by Lessee with respect to the Lost Equipment.

13.4 Lessee shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorney's fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

14. **INSURANCE.**

14.1 (a) Lessee at its sole expense shall at all times keep all Equipment insured against all risks of loss or damage from every cause whatsoever for an amount not less than the Termination Value of the Equipment. Proceeds of any such insurance covering damage or loss of any Equipment shall be payable to Lessor as loss payee. (b) The Total Amount Financed as set forth on the Schedule A-1 does not include the payment of any premium for any liability insurance coverage for bodily injury and/or property damage caused to others and no such insurance will be purchased by Lessor. (c) Lessee at its sole expense shall at all times carry public liability and property damage insurance in amounts reasonably satisfactory to Lessor protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. Proceeds of any such public liability or property insurance shall be payable first to Lessor as additional insured to the extent of its liability, and then to Lessee.

14.2 All insurers shall be reasonably satisfactory to Lessor. Lessee shall promptly deliver to Lessor satisfactory evidence of required insurance coverage and all renewals and replacements thereof.

Each insurance policy will require that the insurer give Lessor at least 30 days prior written notice of any cancellation of such policy and will require that Lessor's interests remain insured regardless of any act, error, misrepresentation, omission or neglect of Lessee. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

15. **PURCHASE OPTION**. Upon thirty (30) days prior written notice by Lessee to Lessor, and so long as there is no Event of Default then existing, Lessee shall have the option to purchase all, but not less than all, of the Equipment covered by a Lease on any Rent Payment due date by paying to Lessor all Rent Payments then due (including accrued interest, if any) plus the Termination Value amount set forth on the Payment Schedule to the applicable Lease for such date. Upon satisfaction by Lessee of such purchase conditions, Lessor shall release its Lien on such Equipment and Lessee shall retain its title to such Equipment "AS-IS, WHERE-IS," without representation or warranty by Lessor, express or implied, except for a representation that such Equipment is free and clear of any Liens created by Lessor.

16. **LESSEE'S REPRESENTATIONS AND WARRANTIES**. With respect to each Lease and its Equipment, Lessee hereby represents and warrants to Lessor that:

(a) Lessee has full power, authority and legal right to execute and deliver the Lease and to perform its obligations under the Lease, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body;

(b) the Lease has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders;

(d) the execution, delivery and performance by Lessee of its obligations under the Lease will not result in a breach or violation of, nor constitute a default under, any agreement, lease or other instrument to which Lessee is a party or by which Lessee's properties may be bound or affected;

(e) there is no pending, or to the best of Lessee's knowledge threatened, litigation of any nature which may have a material adverse effect on Lessee's ability to perform its obligations under the Lease; and

(f) Lessee is a state, or a political subdivision thereof, as referred to in Section 103 of the Code, and Lessee's obligation under the Lease constitutes an enforceable obligation issued on behalf of a state or a political subdivision thereof.

17. **TAX COVENANTS**. Lessee hereby covenants and agrees that:

(a) Lessee shall comply with all of the requirements of Section 149(a) and Section 149(e) of the Code, as the same may be amended from time to time, and such compliance shall include, but not be limited to, keeping a complete and accurate record of any assignments of any Lease and executing and filing Internal Revenue Form 8038G or 8038GC, as the case may be, and any other information statements reasonably requested by Lessor;

(b) Lessee shall not do (or cause to be done) any act which will cause, or by omission of any act allow, any Lease to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or any Lease to be a "private activity bond" within the meaning of Section 141(a) of the Code; and

(c) Lessee shall not do (or cause to be done) any act which will cause, or by omission of any act allow, the interest portion of any Rent Payments to be or become includable in gross income for Federal income taxation purposes under the Code.

(d) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of any Rent Payment under a Tax-Exempt Lease from federal gross income because Lessee breached a covenant contained herein, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rent Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rent Payments under such Tax-Exempt Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by such Tax-Exempt Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event with respect to a Tax-Exempt Lease, it shall pay additional rent to Lessor on each succeeding Rent Payment due date in such amount as will maintain such after-tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error). Notwithstanding anything in a Tax-Exempt Lease to the contrary, any payment that Lessee is required to make pursuant to this subsection (b) shall be made only from Legally Available Funds.

18. **ASSIGNMENT**.

18.1 Lessee shall not assign, transfer, pledge, hypothecate, nor grant any Lien on, nor otherwise dispose of, any Lease or any Equipment or any interest in any Lease or Equipment.

18.2 Lessor may assign its rights, title and interest in and to any Lease or any Equipment, and/or may grant or assign a security interest in any Lease and its Equipment, in whole or in part, to any party at any time. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease. **LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR.** Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease or its Equipment shall be enforceable against Lessee only after Lessee receives a written notice of assignment which discloses the name and address of each such Assignee. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

18.3 Each Assignee of a Lease hereby agrees that: (a) the term Secured Obligations as used in Section 8.3 hereof is hereby amended to include and apply to all obligations of Lessee under the Assigned Leases and to exclude the obligations of Lessee under any Non-Assigned Leases; (b) said Assignee shall have no Lien on, nor any claim to, nor any interest of any kind in, any Non-Assigned Leases; and (c) Assignee shall exercise its rights, benefits and remedies as the assignee of Lessor (including, without limitation, the remedies under Section 20 of the Master Lease) solely with respect to the Assigned Leases. "Assigned Leases" means only those Leases which have been assigned to an Assignee pursuant to a written agreement; and "Non-Assigned Leases" means all Leases excluding the Assigned Leases.

18.4 Subject to the foregoing, each Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

19. **EVENTS OF DEFAULT**. For each Lease, "Event of Default" means the occurrence of any one or more of the following events as they may relate to such Lease: (a) Lessee fails to make any Rent Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (b) Lessee fails to perform or observe any of its obligations under Sections 12.1, 14 or 18.1 hereof; (c) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under the Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof by Lessor; (d) any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; (e) Lessee applies for or consents to the

appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency or similar law, or a petition in a proceeding under any federal or state bankruptcy, insolvency or similar law is filed against Lessee and is not dismissed within sixty (60) days thereafter; or (f) Lessee shall be in default under any other Lease or under any other financing agreement executed at any time with Lessor.

20. **REMEDIES**. If any Event of Default occurs, then Lessor may, at its option, exercise any one or more of the following remedies:

(a) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all amounts then currently due under all Leases and all remaining Rent Payments due under all Leases during the fiscal year in effect when the default occurs together with interest on such amounts at the highest lawful rate from the date of Lessor's demand for such payment.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 21 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand or notice, without any court order or other process of law and without liability for any damage occasioned by such repossession;

(c) Lessor may sell, lease or otherwise dispose of any Equipment, in whole or in part, in one or more public or private transactions, and if Lessor so disposes of any Equipment, then Lessor shall retain the entire proceeds of such disposition free of any claims of Lessee, provided, that the net proceeds of any such disposition shall be applied to amounts payable by Lessee under clause (a) above of this Section only to the extent that such net proceeds exceed the applicable Termination Value set forth in the applicable Schedule A-1;

(d) Lessor may terminate, cancel or rescind any Lease as to any and all Equipment;

(e) Lessor may exercise any other right, remedy or privilege which may be available to Lessor under applicable law or, by appropriate court action at law or in equity, Lessor may enforce any of Lessee's obligations under any Lease; and/or

(f) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all out-of-pocket costs and expenses incurred by Lessor as a result (directly or indirectly) of the Event of Default and/or of Lessor's actions under this section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor's exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of Lessor to exercise any remedy under any Lease shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

21. **RETURN OF EQUIPMENT**. If Lessor is entitled under the provisions of any Lease, including any termination thereof pursuant to Sections 6 or 20 of this Master Lease, to obtain possession of any Equipment or if Lessee is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in Lessor immediately upon Lessors notice thereof to Lessee, and (b) Lessee shall, at its sole expense and risk, immediately de-install, disassemble, pack, crate, insure and return the Equipment to Lessor (all in accordance with applicable industry standards) at any location in the continental United States selected by Lessor. Such Equipment shall be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by the applicable Lease, shall be free and clear of any Liens (except Lessor's Lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation, obligations to pay Rent Payments and to insure the Equipment. Lessee agrees to execute and deliver to Lessor all documents reasonably requested by Lessor to evidence the transfer of legal and beneficial title to such Equipment to Lessor and to evidence the termination of

Lessee's interest in such Equipment.

22. **LAW GOVERNING. Each Lease shall be governed by the laws of the state of the lessee (The "State").**

23. **NOTICES**. All notices to be given under any Lease shall be made in writing and either personally delivered or mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing if sent by regular or certified mail, or on the next business day if sent by overnight courier, or on the day of delivery if delivered personally.

24. **FINANCIAL INFORMATION; INDEMNITY; POWER OF ATTORNEY**. Within thirty (30) days of their completion in each fiscal year of Lessee during any Lease Term, Lessee will deliver to Lessor upon Lessor's request the publicly available annual financial information of Lessee. Lessee shall indemnify, hold harmless and, if Lessor requests, defend Lessor and its shareholders, affiliates, employees, dealers and agents against all Claims directly or indirectly arising out of or connected with (a) the manufacture, installation, use, lease, possession or delivery of the Equipment, (b) any defects in the Equipment, any wrongful act or omission of Lessee, or its employees and agents, or (c) any claims of alleged breach by Lessee of this Master Lease or any related document. "Claims" means all losses, liabilities, damages, penalties, expenses (including attorney's fees and costs), claims, actions and suits, whether in contract, tort or otherwise. Lessee hereby appoints Lessor its true and lawful attorney-in-fact (with full power of substitution) to prepare any instrument, certificate of title or financing statement covering the Equipment or otherwise protecting Lessor's interest in the Equipment, to sign Lessee's name with the same force and effect as if signed by Lessee, and to file same at the proper location(s); and make claims for, receive payment of, and execute and endorse all documents, checks or drafts for loss, theft, damage or destruction to the Equipment under any insurance.

25. **SECTION HEADINGS**. All section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of any Lease.

26. **EXECUTION IN COUNTERPARTS**. Each Schedule to this Master Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall be deemed one instrument. Only one counterpart of each Schedule shall be marked "Lessor's Original" and all other counterparts shall be deemed duplicates. An assignment of or security interest in any Schedule may be created through transfer and possession only of the counterpart marked "Lessor's Original."

27. **ENTIRE AGREEMENT; WRITTEN AMENDMENTS**. Each Lease, together with the exhibits attached thereto and made a part hereof and other attachments thereto, and other documents or instruments executed by Lessee and Lessor in connection therewith, constitute the entire agreement between the parties with respect to the lease of the Equipment covered thereby, and such Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

«LesseeName» ("Lessee")	Oshkosh Capital ("Lessor")
By:_______________________________	By:_______________________________
Title:_____________________________	Title______________________________
«LesseeStreet» «LesseeCSZ»	155 East Broad Street, Locator 16-0056 Columbus, OH 43215

SAMPLE

LEASE SCHEDULE NO. «LeaseNumber»

Dated As Of «SystemDate»

This Lease Schedule (this "Schedule") is attached and made a part of the Master Lease-Purchase Agreement referenced below, together with all exhibits, schedules, addenda, and other attachments thereto, executed by Lessee and Lessor (the "Lease"). Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference. To the extent that there is any conflict between the terms of the Lease and this Schedule, the terms of this Schedule shall control.

Master Lease-Purchase Agreement dated «SystemDate»

1. **EQUIPMENT DESCRIPTION.** As used in the Lease, "Equipment" means all of the property described in Schedule A-1 attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.

2. **RENTAL PAYMENTS; LEASE TERM.** The Rental Payments to be paid by the Lessee to Lessor, the commencement date thereof and the lease term of this Lease Schedule are set forth on the Schedule A-1 attached to this Lease Schedule.

3. **ESSENTIAL USE; CURRENT INTENT OF LESSEE.** Lessee represents that the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens and the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and (if applicable) to make Rent Payments if funds are appropriated in each fiscal year by its governing body.

4. **ACCEPTANCE OF EQUIPMENT.** AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (A) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (B) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (C) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS"; AND (D) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE.

5. **BANK QUALIFIED.** LESSEE CERTIFIES THAT IT HAS DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION IN ACCORDANCE WITH SECTION 265(b)(3) OF THE CODE, THAT IT HAS NOT DESIGNATED MORE THAN $10,000,000 OF ITS OBLIGATIONS AS QUALIFIED TAX-EXEMPT OBLIGATIONS IN ACCORDANCE WITH SUCH SECTION FOR THE CURRENT CALENDAR YEAR AND THAT IT REASONABLY ANTICIPATES THAT THE TOTAL AMOUNT OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY LESSEE DURING THE CURRENT CALENDAR YEAR WILL NOT EXCEED $10,000,000.

6. **RE-AFFIRMATION OF THE MASTER LEASE-PURCHASE AGREEMENT.** Lessee hereby re-affirms all of its representations, warranties and obligations under the Master Lease Purchase Agreement (including, without limitation, its obligation to pay all Rental Payments, its disclaimers in Section 7 thereof and its representations in Section 6.1 and 16 thereof).

«LesseeName» ("Lessee")	Oshkosh Capital ("Lessor")
By:____________________________________	By:____________________________________
Title:__________________________________	Title:__________________________________

City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: February 26, 2013

SUBJECT: Approval of the Amended Woodland-Davis Clean Water Agency Joint Powers Agreement

Recommendation for Action

Staff recommends that the City Council:

1) Approve the Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement, and
2) Authorize the Mayor to sign and execute the Agreement on behalf of the City of Woodland.

Council Goals

- Support the Woodland-Davis Woodland Clean Water Agency to further the surface water project.
- Maintain and enhance infrastructure through reduced costs, greater efficiencies, and partnerships.
- Develop plans and funding strategies to address the long term needs of the community in planning for infrastructure.

Fiscal Impact

The approval by the city councils and implementation of the Amended and Restated Joint Powers Agreement would alter the cities' financial cost shares for the water supply project based on the revised percentages in section 6.1 of the Agreement. The estimated total project cost to the City of Woodland has been reduced to approximately $131 million. If either city exercises its go-it-alone option under section 8, then the scope of the Agency water project would be reduced and the Agency' Project thereafter would be financially supported only by that city. Water rates are already in effect and will not change with this decision.

Background

Effective September 15, 2009, the Cities of Davis and Woodland approved the Davis-Woodland Water Supply Project Authority Joint Powers Agreement, which created the Agency. Since that time, there have been several significant changed circumstances that warrant consideration of a proposed amendment of the Agreement: the Agency and cities have decided to reduce the capacity of the initial water treatment plant to 30 million gallons per day, which affects each city's (and, if it participates, UC Davis') project capacity and cost allocation shares; the Agency and UC Davis have entered into an agreement concerning a potential water supply contract; the Agency has acquired water right permits and licenses; the cities have discussed and tentatively agreed upon a more equitable method to allocate project costs; project implementation has been delayed and the cities desire to commit to a firm schedule to ensure the commencement of construction by late 2013; the City of Davis has called a special election for March 5, 2013 for the Davis voters to decide whether to proceed with the project; and, if a city decides not to proceed according to the agreed-upon schedule, then the cities' desire to allow the other city to proceed through the Agency with the project alone.

Discussion

Agency staff, working closely with the city staffs, prepared the proposed Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement for each respective city council's approval. The Agency is not a party to the Agreement and therefore does need to approve it. Rather, it is for the two city councils to decide whether or how to amend the Agreement.

The proposed Amended and Restated Agreement is included as an Attachment. The following is a summary of the significant changes:

- UC Davis-related provisions have been revised to reflect the Agency and University of California Agreement Concerning Potential Water Supply Contract dated December 21, 2010, as amended. If the joint powers agreement is amended as proposed, then, following that amendment, the Agency and UC Davis would work on a conforming amendment to the Agency-UC Davis agreement

- Section 2.1 has been revised to add an Agency mission statement.

- Section 2.9 has been added to explain the background of the Amended and Restated Agreement.

- With the County of Yolo previously having been approved by the Agency Board as a participating agency, section 4.2.1 has been revised to state that the County of Yolo is a non-voting participating agency.

    - Section 6.1 is an important provision concerning the allocation of project capital and operating costs. It has been substantially rewritten to reflect the two cities' negotiated tentative agreement on revised cost sharing percentages. The Agency and City staffs have carefully worked to ensure that it accurately reflects the intention of the cities.

- Section 6.1 of the original Agreement dealing with the initial advance of Agency start-up funding was deleted as no longer applicable.

- The percentages in section 6.1.1 apply only to pre-July 1, 2013 capital costs.

- The tables in sections 6.1.1 and 6.1.2 include identical cost categories for a direct comparison of pre- and post-July 1, 2013 cost share percentages. The pre-July 1, 2013 costs do not include Joint Transmission Piping, therefore, the cost allocation shares are equal to zero for each Project participant.

- Section 6.1.2 (post-July 1, 2013 capital costs) was drafted based on negotiations and tentative agreement between the staffs of the two cities and the 2 x 2 meetings among four council members.

- Section 6.1.2 also clarifies that the cost sharing percentages in the section 6.1.2 table will apply to the capital costs of the initial project facilities and future modification, and improvement, but that the cost sharing percentages for the capital costs of any future expansion of the project facilities would be as later determined by the Agency Board. Sharing of major repair and replacement costs during the operations period is addressed in section 6.1.4.

- Section 6.1.3 revises and simplifies the sharing of fixed operating costs. Fixed operating costs include items such as operating and preventive maintenance labor and equipment costs, laboratory costs, contractor overhead and profit, and Agency annual water quality testing.

- Section 6.1.4 provides that variable operating costs will continue to be allocated based on each city's proportionate share of the annual volume of use of the project facilities or such other method as may be established by unanimous Agency Board approval. Average water use is expected to vary annually for each Project participant. Variable operating costs include items such as solids disposal chemical, and power costs. Finished water pumping costs to each City and repair and replacement costs for the finished water transmission piping will be billed to the project participant using the particular transmission piping. The amendment extends this cost allocation method to major repair and replacement costs.

- Section 6.1.5 addresses the annual payments under the 2010 water right purchase agreement with Conaway Preservation Group (to purchase Water Right Licenses 904A and 5487A) and it provides that each city's share will be based on the CPG promissory note and city installment purchase agreement percentages.

- Section 6.2 retains the concept for an individual city-owned project facility to be included as part of the project and financed, designed or constructed by the Agency. Currently, there are no such facilities, but the provision has been retained to allow it if a city wishes.

- The requirement for the Agency to prepare a capital improvement plan every five years (section 6.14 of the current Agreement) has been deleted. This requirement is not appropriate with the DBO procurement approach. The DBO service contract contains provisions that require the DBO firm to provide similar information for the duration of the contract.

- Section 6.15 of the current Agreement dealing with pre-September 15, 2009 debts and cost sharing has been deleted because that cost reconciliation has been completed and the provision is no longer applicable.

- Section 7.1 has been revised to clarify that after construction of the initial project facilities the Agency Board may decide to expand the project facilities.

- Section 7.2 addresses city council approval of key project milestones – issuance of debt for and commencing final engineering and construction of the initial project facilities. All later project approvals would be entrusted to the Agency Board and the city council representatives on the Agency Board.

- Section 7.3.1 has been revised to set forth the revised project capacity shares of the cities based on the 30 mgd water treatment plant and consistent with Agency Board Resolution No. 2012-07 (recently approved on December 20, 2012). Section 7.6 of the original Agreement addresses the intention to negotiate and enter into an agreement with UC Davis. It has been deleted in light of the 2010 Agreement Concerning Potential Water Supply Contract.

- Section 7.9 of the original Agreement addresses the assignment to the Agency of water right applications by the cities and UC Davis and it has been deleted because those applications have been assigned.

- Section 8 is a significant new section and Exhibit C to the Amended Agreement is a significant new exhibit that addresses the process for each city to commit to the project in coming months and the process by which one city may go it alone on the project through the Agency if the other city fails to timely approve certain project-related actions. The Amended and Restated Joint Powers Agreement has been drafted to memorialize the tentative agreement on this matter between the city staffs and 2 x 2 meetings. The Agency and City staffs have carefully worked to ensure that it accurately reflects the intention of the cities.

- The termination provisions (sections 10.2 and 10.3) have been revised to provide that a city may terminate the Joint Powers Agreement for convenience only up to April 2, 2013. After April 2, 2013, the Joint Powers Agreement may be terminated and Agency dissolved only pursuant to a dissolution agreement negotiated and approved by the two cities.

The staff of the City of Davis is taking this exact agreement to their City Council for approval this evening.

Commission/Committee Recommendation

The Woodland Utility Advisory Committee has been supportive of the Davis Woodland Water Supply Project provided that it is implemented in the most cost-effective manner possible and the project is not unduly delayed. This amended agreement assures that costs are equitably shared and includes provisions for the City of Woodland to move forward in a timely manner.

Conclusion

Staff recommends that the City Council approve the Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement as presented at this meeting.

Prepared by: Doug Baxter
Project Manager

Reviewed by: Nicholas J. Ponticello
Community Development Director

Reviewed by: Gregor G. Meyer
Public Works Director

____
Paul Navazio
City Manager

Attachment: Amended and Restated Woodland-Davis Clean Water Agency Joint Powers Agreement

AMENDED AND RESTATED WOODLAND-DAVIS CLEAN WATER AGENCY JOINT POWERS AGREEMENT

This Amended and Restated Joint Powers Agreement is made this ___ day of __________ 2013 by and between the City of Davis, a general law city, and the City of Woodland, a general law city, who agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the words and phrases below shall have the following meanings:

1.1. "Act" means the Joint Exercise of Powers Act, California Government Code title I, division 7, chapter 5 (commencing with Section 6500).

1.2. "Administration Costs" mean the Project-related costs of Agency administration, legal services, program management, Environmental Documentation, Permitting (including any mitigation costs or filing fees related to Permitting), and contract negotiation costs.

1.3. "Agreement" means this Amended and Restated Joint Powers Agreement.

1.4. "Agency" means the Woodland-Davis Clean Water Agency created pursuant to this Agreement.

1.5. "Agency-Only Intake Facilities" mean the Agency pumping, electrical, piping, valving, stand-by power, chemical addition, and appurtenances to be installed by the Agency at the Raw Water Intake site.

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

1.7. "Capital Costs" mean the Project-related costs of Construction, financing, acquiring, planning, and designing, the funding of a reasonable construction reserve, and design-period and Construction-period Administration Costs. Capital Costs include both the Capital Costs of the Project Facilities construction and any one-time initial costs and payments under a water supply or water right purchase contract approved by the Agency, but not the on-going costs of water or debt service under a water supply or water right purchase contract.

1.8. "Completion of Construction" means the final completion (not substantial completion) of Construction of the particular Project Facility as defined and determined under the Agency construction contract pertaining to that Project Facility.

1.9. "Construction" means the Project-related procurement of material, parts and equipment, conducting construction, construction management and related field services including project management activities, contractor management, design assistance during construction, as-built-drawings, and startup testing.

1.10. "CEQA" means the California Environmental Quality Act.

1.11. "Design-Build Costs" mean the Project-related costs of property and rights-of-way acquisition, Permitting fees, engineering, design, design review, Construction, implementation of and compliance with Permitting and environmental mitigation measures and other requirements during Construction, and Construction-period monitoring of compliance with Permitting requirements and environmental, water quality, endangered species and related laws and regulations.

1.12. "Dedicated Capacity" means the capacity of the Project Facilities dedicated to each Project Participant as set forth below in section 7.3.

1.13. "Director" means a member of the Board of Directors.

1.14. "District" means the Yolo County Flood Control and Water Conservation District.

1.15. "Effective Date" means the effective date of this Agreement and the Agency as provided in section 3.4.

1.16. "Environmental Documentation" means all activities and documents required to comply with federal and/or state environmental, water quality and endangered species laws and regulations (including CEQA) in connection with Permitting and the construction and operation of the Project, but not including implementation of and compliance with Permitting and environmental mitigation measures and other requirements during Construction and Construction-period monitoring of compliance with Permitting requirements and environmental, water quality, endangered species and related laws and regulations.

1.17. "Final EIR" means the Davis-Woodland Water Supply Project Final Environmental Impact Report dated October 2007 certified by the Davis City Council on October 16, 2007, and as approved by the Woodland City Council as a CEQA responsible agency on November 6, 2007.

1.18. "Final Engineering" means engineering and related activities that are necessary or appropriate to develop and prepare final design plans, specifications, drawings, and bidding and construction documents for the Project.

1.19. "Fiscal Year" means July 1 through June 30 or such other annual period as the Board may determine.

1.20. "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, operations and maintenance labor, laboratory costs, landscape maintenance, preventive maintenance, operation-period Administrative Costs, employee salaries and expenses.

1.21. "Force Majeure" means delays or defaults due to acts of God, government (other than acts or failure to act by one of the Parties), litigation, including litigation challenging the validity of this Agreement or any element thereof, general strikes or other force or event beyond the responsible party's reasonable control.

1.22. "Individually-Owned Project Facility" means a Project Facility to be financed and constructed by the Agency as part of the Project, but to be owned and operated by one of the Project Participants as may be later agreed to between the Agency and Project Participant.

1.23. "mgd" means millions of gallons of water per day.

1.24. "Participating Agency" means UC Davis, County of Yolo and any other future participating agency approved pursuant to section 4.2.

1.25. "Participating City" and "Nonparticipating City" have the meanings as described in section 8.2.

1.26. "Parties" mean the Cities of Davis and Woodland. "Party" means either one of the Parties.

1.27. "Permitting" means all activities and documents to apply for and acquire the permits and licenses that are required under federal, state and/or local laws and regulations to construct and operate the Project, including, but not limited to, conducting required studies, endangered species act consultation, environmental documentation, public notifications, preparation of permit and license applications, consultation and negotiations with involved persons and organizations including regulatory agencies. Permitting also shall include the acquisition of water right permits, licenses and contract water supplies that are necessary or appropriate for the Project.

1.28. "Project" means the preferred project alternative as described in the Final EIR and as approved by the City of Davis in its City Council resolution approved on October 16, 2007 and by the Woodland City Council as a CEQA responsible agency on November 6, 2007, the Project modifications described in CEQA addenda approved by the Agency, and any other changes to this preferred alternative or other water supply improvements or enhancements that are approved by the Board.

1.29. "Project Facility" or "Project Facilities" mean each facility or all facilities (as the case may be) identified as a Project Facility in Exhibit A, attached hereto and incorporated herein and such other Project-related facilities and improvements as may be approved by the Board. The "Initial Project Facilities" mean the (a) facilities and improvements as described in the Agency Request for Proposals for Davis-Woodland Water Supply Project Design-Build-Operate dated December 20, 2012, with a 30 mgd capacity Regional Water Treatment Facility, (b) Davis, Woodland and Joint Transmission Piping, (c) Raw Water Transmission Main, (d) Agency separate facilities and Agency share of the common facilities of the Raw Water Intake to be jointly constructed with RD 2035 pursuant to the Sacramento River Joint Intake and Diversion Agreement dated December 21, 2010, and (e) Agency-Only Intake Facilities. The Project Facilities may be modified by the Board.

1.30. "Project Participants" mean the Parties and UC Davis if UC Davis timely exercises its option to participate in the Project pursuant to the terms of the Woodland-Davis Clean Water Agency and University of California Agreement Concerning

Potential Water Supply Contract dated December 21, 2010, as amended. If UC Davis does not timely exercise its option, then UC Davis will not be considered a Project Participant. "Project Participant" means any one of the Project Participants.

1.31. "RD 2035" means Reclamation District 2035.

1.32. "Raw Water Intake" means the raw water diversion and intake facility to be constructed by RD 2035 as described in the Sacramento River Joint Intake Project 100% Draft Design Specifications dated August 2012 prepared by MWH Americas, Inc.

1.33. "Raw Water Transmission Main" means the pipeline conveying untreated Sacramento River water from the Raw Water Intake to the Regional Water Treatment Facility.

1.34. "Regional Water Treatment Facility" means the Project water treatment plant to be located in the City of Woodland.

1.35. "Repair and Replacement Costs" mean the costs for major repair and replacement costs, excluding preventive maintenance, of the Project Facilities as determined in accordance with the Agency design-build-operate service contract and as otherwise determined by the Board.

1.36. "Technical Services to Davis" mean Agency Project-related services and activities performed solely for the benefit of the City of Davis.

1.37. "Technical Services to Woodland" mean Agency Project-related services and activities performed solely for the benefit of the City of Woodland.

1.38. "Transmission Piping" means the treated water transmission lines between the Regional Water Treatment Facility to be constructed as part of the Project Facilities and the Davis and Woodland water distribution systems, and excludes the Raw Water Transmission Main.

1.38.1. "Joint Transmission Piping" means the portion of the Transmission Piping from Regional Water Treatment Facility to the south side of County Road 25, with two connections installed for the use of Woodland.

1.38.2. "Davis Transmission Piping" means the portion of the Transmission Piping from the south side of County Road 25 to the point of interconnection with the Davis water distribution system.

1.38.3. "Woodland Transmission Piping" means the portion of the Transmission Piping from the Regional Water Treatment Facility to the points of interconnection with the Woodland water distribution system.

1.39. "UC Davis" means The Regents of the University of California acting for and on behalf of the University of California, Davis.

1.40. "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 cost for solids disposal, power, and chemicals.

2. RECITALS. This Agreement is made with reference to the following background recitals.

2.1. The Parties each have the authority to develop, construct, operate and maintain water supply facilities and services. The Parties have agreed to jointly pursue development and implementation of a project that would involve, if finally approved, implemented and constructed, a new treated surface water supply. The Parties desire to implement this goal by creating a joint exercise of powers authority to exercise those powers in common for their mutual benefit as provided in this Agreement. The principal goal of this Agreement and Project and the mission of the Agency are to provide a long-term, secure, reliable, high-quality water supply for the mutual benefit of the Project Participants in a safe, efficient, on-schedule, cost-effective and environmentally sound manner. The objective is to provide a treated surface water supply for the Parties by September 2016.

2.2. The Parties and UC Davis previously have cooperated in the planning and development of a supplemental regional treated surface water supply pursuant to a series of memoranda of understanding dated July 12, 2000, November 18, 2003 and June 1, 2005 (as amended in October, 2007 and further amended in May, 2009), copies of which are on file with each of the Parties (the "MOUs"). Pursuant to the 2000 and 2003 MOUs, the following documents were prepared: the City of Davis and University of California, Davis Joint Water Supply Feasibility Study dated September 2002; and, the Preliminary Environmental Review City of Davis, UC Davis and City of Woodland Joint Water Supply Feasibility Study dated July 2004; copies of which are on file with each of the Parties.

2.3. Pursuant to the 2005 MOU and based on the 2002 and 2004 studies, Davis has acted as a lead agency under CEQA in the preparation of an environmental impact report for the Davis-Woodland Water Supply Project. On October 16, 2007, the Davis City Council certified the Davis-Woodland Water Supply Project Final Environmental Impact Report and approved the preferred project alternative (as described in the Final EIR) as the project to be implemented.

2.4. On November 6, 2007, the Woodland City Council adopted findings as a CEQA responsible agency with respect to the Davis-Woodland Water Supply Project Final Environmental Impact Report and approved the preferred project alternative as the project to be implemented.

2.5. The 2005 MOU contemplates that further Project implementation will consist of Phases 3-5, which include Project-related acquisition of water rights, water supply contracts, permits (including additional environmental review and documentation), lands and rights-of-way, engineering, financing, construction, start-up, operation and maintenance. The 2005 MOU provides that subsequent Project phases will be implemented pursuant to a joint powers agreement or other agreement. This Agreement is the "Phase 3-5 Agreement" as contemplated by the 2005 MOU. The purpose of this Agreement is to provide the legal mechanism under which the Agency will conduct and implement Project Phases 3-5 (as defined in the MOU dated June 1, 2005) for the benefit of the Parties.

2.6. The Parties have agreed to share in the costs of Project-related acquisition of water rights, water supply contracts, Environmental Documentation, Permitting, design, Final Engineering, financing, property and rights-of-way acquisition, Construction, operation, maintenance and management of the Project on and subject to the terms of this Agreement.

2.7. The Parties have a joint and mutual interest in the successful planning, design, construction and operation of the Project. The Parties each have the power to design, finance, lease, purchase, condemn, acquire, construct, operate, maintain, sell, hypothecate or otherwise dispose of the Project and related property for the purpose of the production, treatment and distribution of water as provided herein.

2.8. These powers can be exercised best through the cooperative action of the Parties through a joint exercise of powers agreement. Each of the Parties is authorized to contract with the other for the joint exercise of these common powers under the Joint Exercise of Powers Act.

2.9. At the time of the adoption of the 2013 Amended and Restated Joint Powers Agreement, the following significant changed circumstances relate to the amended agreement: the Agency has decided to reduce the capacity of the initial Regional Water Treatment Facility to 30 mgd, which affects each Project Participant's Dedicated Capacity and cost allocation shares; the Agency and UC Davis have entered into an agreement concerning a potential water supply contract; the Parties have discussed and developed a more equitable method to allocate Transmission Piping Capital Costs; Project implementation has been delayed and the Parties desire to commit to a firm schedule to ensure the commencement of Construction of the Project Facilities by late 2013; the Agency has acquired water right permits and licenses; the City of Davis has called a special election for March 5, 2013 for the Davis voters to decide whether to proceed with the Project; and, if either Party fails to follow the agreed-upon schedule, then the other Party may proceed with the Project alone under the terms described in section 8. This Amended and Restated Joint Powers Agreement affirms, continues in effect and amends the initial September 15, 2009 Agreement.

3. CREATION OF AGENCY.

3.1. Authority. This Agreement is authorized by, and entered into pursuant to, the Act and other applicable law.

3.2. Agency Created. There is hereby created a public agency to be known as the "Woodland-Davis Clean Water Agency." The Agency shall be a public agency separate from the Parties. The Agency may change its name at any time through adoption of a resolution by the Board of Directors.

3.3. Liabilities. The debts, liabilities, contracts and obligations of the Agency shall be the debts, liabilities, contracts and obligations of the Agency alone. No debt, liability, contract or obligation of the Agency shall be or constitute a debt, liability, contract or obligation of the Parties or either of them. The Agency shall not have the authority to bind the Parties or either of them to any debt, liability, contract or obligation. However, a Party or Parties separately may contract for, or otherwise expressly assume responsibility for, a specific debt, liability, contract or obligation of the Agency, but only the Party or Parties expressly assuming responsibility shall be so bound, and no other Party then shall be liable for such debt, liability, contract or obligation.

3.4. Effective Date. The effective date of this Agreement and of the legal existence of the Agency shall be September 15, 2009, and this Agreement and the Agency shall continue in full force and effect until terminated as provided in this Agreement.

3.5. No Restriction on Other JPA. Nothing in this Agreement shall prevent the Parties from entering into other joint powers agreements.

4. ORGANIZATION, BOARD AND OFFICERS.

4.1. Membership. The Parties of the Agency shall be the Cities of Davis and Woodland.

4.2. Participating Agencies.

4.2.1. UC Davis and County of Yolo shall participate as Participating Agencies with the Agency. UC Davis is a Participating Agency because UC Davis has transferred and assigned a water right permit application to the Agency and it is anticipated that UC Davis may become a Project Participant and receive Dedicated Capacity in the Project and a water supply from the Agency. County of Yolo is a Participating Agency because of the County's interest in County-wide water supply planning, management and development. The District could become a future Participating Agency because it is responsible for countywide water planning, management and coordination, it is a potential Project funding partner, and it may provide a water supply to the Project. RD 2035 could become a future Participating Agency because the Project may utilize its Sacramento River water diversion/intake facility. The Agency Board may by resolution approve additional Participating Agencies.

4.2.2. A Participating Agency shall be entitled to participate in open session Board meetings regarding the planning, design, Construction and operation of the Project. Agency may consult from time to time with current and potential future Participating Agencies regarding Project design, planning and implementation. Agency may cooperate and consult with current and potential future Participating Agencies regarding countywide and regional water planning, management and conjunctive use issues. UC Davis also may have Dedicated Capacity in the Project and a water supply pursuant to the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract dated December 21, 2010, as amended.

4.3. Board of Directors. The Agency shall be governed by a legislative body known as the Board of Directors. The Board shall consist of four directors, with two appointed by each Party. Each Party shall also select one alternate. Each Director shall be entitled to one vote. A Participating Agency may appoint a non-voting member to the Board who shall sit with the four voting Directors at open session Board meetings, and have the right to participate in public Board discussions but shall not be counted towards a quorum, and may not make, or second, motions. A Participating Agency may also appoint an alternate member to the Board to attend in absence of the designated Participating Agency representative.

4.4. Selection of Directors. Within 30 days after the execution of this Agreement by both of the Parties, each Party shall designate and appoint two representatives to serve as Directors on the Board. Each Party also shall appoint an alternate Director. For each Party, each representative shall be a city council member. The alternate member shall also be a city council member. Alternates shall assume all rights of a Director representing the appointing entity and shall have the authority to act in the absence of a Director or in the event that a Director has a conflict of interest that precludes participation by the Director in any decision-making process of the Agency. Each Party shall give written notice to the Agency Secretary of the names of its Directors and alternate Director. The names of all directors and alternates shall be on file with the Board. Each of the Directors and alternate Directors shall hold office from the first meeting of the Board after the appointment of the Director or alternate Director until a successor is selected. Directors, alternate Directors and Participating Agency members shall serve at the pleasure of the governing body of their appointing Parties or agency and may be removed at any time, with or without cause, at the sole discretion of such governing body.

4.5. Compensation. No Director shall receive any compensation from the Agency for serving as such; however, a Director may be reimbursed for necessary and actual expenses incurred by such Director in the conduct of the Agency's business. Except as specifically provided in this Agreement, staff of the Parties shall not be compensated by the Agency for their time incurred on Agency business and affairs.

4.6. Board Action.

4.6.1. All the power and authority of the Agency will be exercised by the Board, subject, however, to the rights reserved by the Parties as set forth in this Agreement, and provided further that the Board may delegate such powers and authority to its officers, employees, contractors and others as the Board deems appropriate.

4.6.2. The Board may act only by ordinance, resolution or motion.

4.6.3. Except as otherwise provided in section 8, for the purposes of transacting the business of the Board, a quorum shall consist of three Board Directors and a majority vote of the entire Board shall be required for any Board action, except where different voting requirements are provided for in this Agreement.

4.7. Principal Office. The Board shall designate a location in Yolo County as the principal Agency office. The Board may change the principal office from time to time.

4.8. Meetings. The time, frequency and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Party and Participating Agency. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Government Code title 5, division 2, part 1, chapter 9 (commencing with Section 54950)).

4.9. Organization of the Board. The Board shall elect a Chair and a Vice-Chair to serve for a term of one year, unless sooner terminated at the pleasure of the Board. The first Chair and Vice-Chair appointed shall hold office from the date of appointment to June 30 of the ensuing year. The position of Chair and Vice-Chair shall alternate between representatives of each Party. The Board may, from time to time, determine the dates for the commencement and completion of the terms of the Chair and Vice-Chair.

4.10. Officers. The Agency shall provide for and appoint the following officers:

4.10.1. Treasurer/Auditor. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government Code Section 6505.6, and shall strictly comply with the statutes relating to the duties of such offices found in the Act. The Treasurer shall be the depository and have custody of all money of the Agency from whatever source, and shall draw all warrants and pay demands against the Agency as approved by the Board. The Treasurer shall cause independent audits of the finances of the Agency to be made by a certified public accountant in compliance with Government Code Section 6505. The Treasurer shall serve at the pleasure of the Board.

In lieu of designating the Treasurer and Auditor as set forth in this section, the Board may designate the treasurer of one of the Parties or a certified public accountant to be the Treasurer, as set forth in Government Code Section 6505.5. The Board shall then designate an Auditor as set forth in section 6505.5. The Treasurer shall serve at the pleasure of the Board.

4.10.2. Secretary. The Secretary shall cause to be kept minutes of all meetings of the Board. The Secretary shall maintain the records of the Agency. The Secretary shall be appointed by and shall serve at the pleasure of the Board.

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

4.10.4. Additional Officers. The Board may appoint such additional officers as it deems necessary or appropriate.

4.10.5. Qualifications. Any officer, employee or agent of the Board also may be an officer, employee or agent of any of the Parties. Except as specifically provided in section 4.14, no officer, employee, agent or attorney of any of the Parties shall receive compensation from the Agency for time spent on Agency matters.

4.11. Technical Committee. There shall be a Technical Committee consisting of each Party's Public Works Director or his or her designee. The Technical Committee shall be responsible for monitoring the activities of the Agency on behalf of the Parties and making such reports as the Board deems appropriate. The Technical Committee may make recommendations to the Board with respect to the appointment and termination of the Agency General Manager. The Technical Committee shall consult with and advise the General Manager concerning Project design, planning and implementation. The Technical Committee may only take action if the Public Works Directors, or designees, of both parties agree. A Participating Agency may be involved in Technical Committee meetings subject to Technical Committee member invitation.

4.12. Privileges, Liability and Immunity. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Parties when performing their respective functions shall apply to the same degree and extent while such individuals are engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Parties or subject to any of the requirements of such Parties.

4.13. General Manager. Upon Board determination of necessity, the Board shall appoint a General Manager who shall be responsible to the Board for the proper and efficient administration of the Agency as directed by the Board pursuant to the provisions of this Agreement or of any ordinance, resolution or order of the Board not inconsistent with this Agreement. The General Manager may be retained under contract with the Agency, be an employee of the Agency, or be an employee of one of the Parties. The General Manager shall report directly to the Board and serve as staff to the Agency. Any communications, correspondence or other material that is furnished to the Board by the General Manager shall also be furnished to the Technical Committee unless the General Manager is directed otherwise by the Board. The General Manager shall serve at the pleasure of the Board. In addition to any other duties that may be assigned by the Board, the General Manager shall have the following authority:

4.13.1. Under the policy direction of the Board, and in consultation with the Technical Committee, to plan, organize, administer, implement and direct all activities of the Project and Agency;

4.13.2. To authorize expenditures within the designations and limitations of the budget approved by the Board;

4.13.3. To make recommendations to and requests of the Board concerning any matter which is to be performed, done or carried out by the Agency;

4.13.4. To assign, supervise and otherwise control the activities of any Agency employees, Party employees assigned to the Agency, and contractors that may be retained by the Agency; and,

4.13.5. To have charge and control of and manage all real and personal property acquired by the Agency.

4.14. Staff. A Party may assign its employees to serve as officers or perform other services for the Agency, subject to the approval of both the Agency and Party. The services of such assigned employees shall be at the expense of the contributing Party, unless the contributing Party and the Agency enter into a written agreement to reimburse the Party for the value of the services provided by the assigned employees. The Agency also may enter into appropriate contracts for staff services or employ staff directly.

4.15. Bylaws and Rules. The Board may adopt from time to time such bylaws, rules and regulations for the conduct of its meetings and affairs of the Agency as may be necessary or appropriate.

5. POWERS AND PURPOSES.

5.1. Purposes. Each Party has in common the power to study, plan, develop, finance, acquire, condemn, lease, design, construct, maintain, repair, manage, operate, control and dispose of the Project Facilities, either alone or in cooperation with other public or private entities. The purpose of this Agreement is to jointly exercise some or all of the foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner set forth in this Agreement, in order to provide for the most cost-efficient and timely acquisition of water rights, water supply contracts, Environmental Documentation, Permitting, design, Final Engineering, financing, property and rights-of-way acquisition, Construction, operation, maintenance and management of the Project. A related purpose of this Agreement is to better manage and coordinate the area surface and groundwater resources for the mutual benefit of the Parties.

5.2. Powers. All of the power and authority of the Agency shall be exercised by the Board. Subject to the conditions and restrictions in this Agreement, the Agency, in its own name, shall have the common powers of the Parties and as otherwise granted by the Act, in order to achieve the purposes of the Agency as set forth in Section 5.1. The Agency is authorized in its own name to do all acts necessary or convenient to the exercise of these powers and for these purposes, including but not limited to any or all of the following:

5.2.1. To exercise jointly the common powers of the Parties in studying, planning, designing and implementing the Project and other water supply projects consistent with this Agreement.

5.2.2. To make and enter contracts, and to execute leases, installment sale contracts or installment purchase contracts in accordance with procedures and requirements as permitted by law.

5.2.3. To contract for or employ clerical, administrative, technical or professional staff or consultant support of any kind including engineers, attorneys, planners, financial consultants or other agents or employees.

5.2.4. To design, acquire, construct, manage, maintain and operate any buildings, works, or improvements.

5.2.5. To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, devise, or exercise of the power of eminent domain; to hold, manage, lease and dispose of any such property.

5.2.6. To hold, manage, operate and maintain all Agency property, facilities, buildings, structures, vehicles, apparatus and equipment.

5.2.7. To incur debts, liabilities or obligations subject to limitations set forth in this Agreement.

5.2.8. To sue and be sued in its own name.

5.2.9. To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.

5.2.10. To apply for and accept appropriate grants and loans under any federal, state or local programs for assistance in developing the Project, or any future authorized modifications to the Project.

5.2.11. To enter into arrangements for the transmission, purchase and sale of electrical power, or the trading of electrical power, related to operation of the Project.

5.2.12. To obtain, in its own name, all necessary and appropriate permits, licenses, entitlements, opinions and rulings.

5.2.13. To procure bonds, insurance and self-insurance as it deems advisable to protect the Parties and Agency and its property, officers, employees, contractors and agents.

5.2.14. To form and administer nonprofit corporations to do any part of what the Agency could do, or to perform any proper corporate function, and enter into agreements with such a corporation.

5.2.15. To issue bonds and certificates of participation in accordance with applicable statutes, including, but not limited to, the following: Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540; Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300; and, Article 4, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6584.

5.2.16. To use other financing acts, including, but not limited to, the Mello-Roos Community Facilities District Act of 1982, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915.

5.2.17. To exercise any of the powers set forth in the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of the Act).

5.2.18. To enter into agreements incident to the issuance of bonds and certificates of participation for the purpose of enhancing the credit or liquidity of such bonds, or to place such bonds on a different payment schedule, such as an interest rate swap, cap or similar instrument, or in connection with the investment of the proceeds of such bonds.

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

5.2.20. To enter into agreements with the Parties and Participating Agencies for the construction, operation, maintenance and/or management of certain Project Facilities.

Notwithstanding the foregoing, the Agency shall have any additional powers conferred under the Act, insofar as such additional powers may be necessary or desirable to accomplish the purposes of the Agency.

5.3. Manner of Exercise of Powers. To the extent not specifically provided for in this Agreement or the Act, the Agency shall exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to the City of Woodland.

5.4. Use of Project Water. The Agency shall operate the Project and use its best efforts to ensure that the Dedicated Capacity set forth in section 7.3 is, at all times, fully available for use by the Project Participants within their respective service areas. A Project Participant shall not sell, convey, transfer or make its Dedicated Capacity available to a third-party without the prior approval of the Agency. This restriction shall not apply to a Project Participant's water service obligations to provide treated water within its service area. A Project Participant shall not use, convey or transfer Project water for use outside the authorized place of use specified in the Agency's water right permit(s) or license(s).

6. ALLOCATION OF COSTS, FINANCE AND ACCOUNTING

6.1. Allocation of Costs. The costs incurred by the Agency in carrying out its functions shall be allocated between the Project Participants pursuant to this section. The Parties' respective percentage shares in this section 6.1 may be changed by unanimous Board approval. In the Final Engineering and Construction phases of the Project, the Agency shall keep and maintain accurate records showing and segregating the Capital Costs of the various Project Facility cost categories set forth below.

6.1.1. <u>Capital Costs – Pre-July 1, 2013</u>. Capital Costs for the Project Facilities incurred prior to July 1, 2013 shall be allocated based on the following percentage shares, or as previously approved by the Board:

Capital Costs Category	Cost Allocation Shares	
	Davis	Woodland
Administration Costs	46.1%	53.9%
Technical Services to Davis	100%	0%
Technical Services to Woodland	0%	100%
Raw Water Intake*	46.1%	53.9%
Agency-Only Intake Facilities	46.1%	53.9%
Raw Water Transmission Main	46.1%	53.9%
Regional Water Treatment Facility**	46.1%	53.9%
Joint Transmission Piping	0%	0%
Davis Transmission Piping	100%	0%
Woodland Transmission Piping	0%	100%
Davis Individually-Owned Project Facilities (if any)	100%	0%
Woodland Individually-Owned Project Facilities (if any)	0%	100%

* The Joint Raw Water Intake Facilities costs include Agency administrative and other costs relating to the acquisition of Water Right Licenses 904A and 5487A and the related Bureau of Reclamation settlement contract.

** Including the 2012 City of Woodland project to elevate the Regional Water Treatment Facility site.

6.1.2. Capital Costs – Post-July 1, 2013. Capital Costs for the Project Facilities incurred on and after July 1, 2013 shall be allocated based on the following percentage shares:

Capital Costs Category	Cost Allocation Shares	
	Davis	Woodland
Administration Costs	50.0%	50.0%
Technical Services to Davis	100%	0%
Technical Services to Woodland	0%	100%
Raw Water Intake*	46.1%	53.9%
Agency-Only Intake Facilities	40.8%	59.2%
Raw Water Transmission Main	40.8%	59.2%
Regional Water Treatment Facility	40.8%	59.2%
Joint Transmission Piping	50.0%	50.0%
Davis Transmission Piping	100%	0%
Woodland Transmission Piping	0%	100%
Davis Individually-Owned Project Facilities (if any)	100%	0%
Woodland Individually-Owned Project Facilities (if any)	0%	100%

* The Raw Water Intake costs include Agency administrative and other costs relating to the acquisition of Water Right Licenses 904A and 5487A and the related Bureau of Reclamation settlement contract.

The percentage shares in this section 6.1.2 table shall apply to the Capital Costs of the Initial Project Facilities and future Agency Capital Costs, including, modification, improvement and minor repair and replacement costs, but excluding any Repair and Replacement Costs and any costs for expanding or increasing capacity. Following the Construction of the Initial Project Facilities, the percentage shares of the Capital Costs to apply to any expansion of, addition to or increase of capacity of the Project Facilities shall be determined by the Board.

6.1.3. Fixed Operating Costs. Fixed Operating Costs for the Project Facilities shall be allocated based on the following percentage shares:

Project Facility Category	Cost Allocation Shares	
	Davis	Woodland
All Project Facilities	50.0%	50.0%

6.1.4. Variable Operating and Repair and Replacement Costs. Variable Operating Costs for Project Facilities and Repair and Replacement Costs shall be allocated between the Project Participants based on each Project Participant's proportionate share of the volume of use of the Project Facilities or such other method as may be established by unanimous Board approval. Repair and Replacement Costs relating to the Transmission Piping will be allocated only to the Project Participants using the particular Transmission Piping. Power costs for the Davis and Woodland finished water pump stations will be allocated solely to each respective city. If a City of Woodland connection is made to the Joint Transmission Piping, a proportionate share of the Davis finished water pumping station costs will be allocated to Woodland based on Woodland's relative volume of use of that pumping station or on such other method as may be established by unanimous Board approval. If UC Davis participates in the Project, a proportionate share of the Davis finished water pumping station costs will be allocated to UC Davis based on UC Davis' relative volume of use of that pumping station or as otherwise may be approved by the Agency and UC Davis.

6.1.5. Supplemental Water Purchase Costs. The costs of the annual note payments by the Agency under the Water Agreement with Conaway Preservation Group, LLC dated December 29, 2010, as amended, and related promissory notes (to purchase Water Right Licenses 904A and 5487A) shall be allocated based on the following percentage shares:

Category	Cost Allocation Shares	
	Davis	Woodland
Supplemental Water Purchase	46.1%	53.9%

6.1.6. UC Davis Participation. Following approval of this Agreement, the Agency and UC Davis plan to amend the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract dated December 21, 2010, as amended, to incorporate the Project-related changes that are addressed in this Agreement. In the amendment to the Woodland-Davis Clean

Water Agency and University of California Agreement Concerning Potential Water Supply Contract, the Agency and UC Davis will determine and approve appropriate and equitable cost allocation share and dedicated capacity share percentages for the Project Participants under a UC Davis participating scenario with reference to the UC Davis dedicated capacity share amount of 1.8 mgd. The amendment will include revisions of the tables in sections 6.1.1, 6.1.2, 6.1.3, 6.1.5 and 7.3.1 to show the Project Participant amounts and percentages that will apply in the event UC Davis timely exercises its option to participate in the Project pursuant to the terms of the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract. In amending the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract with UC Davis, the Board may determine and approve the section 6.1.1, 6.1.2, 6.1.3, 6.1.5 and 7.3.1 amounts and percentages to apply if UC Davis timely exercises its option to participate in the Project.

6.2. Individually-Owned Project Facilities.

6.2.1. If approved by the Agency Board and agreed to in writing by the Agency and a Project Participant, an Individually-Owned Project Facility or Facilities may be included as part of the Project and financed, designed or constructed by the Agency. Upon Completion of Construction of any Individually-Owned Project Facility, the Agency will convey all of its right, title and interest in the completed Individually-Owned Project Facility to the Project Participant that is served by that Project Facility and that Project Participant shall accept the conveyance of the completed Project Facility and thereafter be responsible for the ownership, operation, maintenance, repair, replacement, modification and improvement of that Project Facility. The Agency shall have no obligation to operate, maintain, repair, replace, modify or improve any Individually-Owned Project Facility.

6.2.2. For an Individually-Owned Project Facility, Capital Costs may include such costs related to the initial design and Construction of that Project Facility. The Capital Costs of an Individually-Owned Project Facility shall be allocated entirely to the Project Participant that will be served by that Project Facility (see section 6.1.2). After Completion of Construction and conveyance of the completed Individually-Owned Project Facility to a Project Participant, the Agency shall not incur or allocate to the Project Participants any subsequent Capital Costs related to the repair, replacement, modification or improvement of the Individually-Owned Project Facility. The Agency will not be responsible for the operation and maintenance of any Individually-Owned Project Facility, and the Agency shall not incur or allocate to the Project Participants any Fixed Operating Costs, Variable Operating Costs or Repair and Replacement Costs related to the operation and maintenance of any Individually-Owned Project Facility.

6.3. Payment Obligations.

6.3.1. Each of the Parties agrees that its water enterprise fund or such other fund as a Party may determine, but not the Party's general fund, will be responsible for paying its respective share of all costs of the Agency in accordance with the payment schedule adopted by the Board pursuant to section 6.3.2 below, and consistent with the cost allocation methodology set forth in section 6.1 and any bonds or certificates of financing issued or financing agreements entered into by Agency.

6.3.2. All costs of the Agency shall be annually assessed on the Parties by the Board in amounts sufficient to meet the obligations of the Agency for that fiscal year as set forth in the Agency's annual budget. The Board also shall establish a payment schedule for each annual assessment consistent with the projected cash flow needs of the Agency and any bonds or financing agreements entered into by the Agency. Each Party's water enterprise fund or such other fund as a Party may determine, but not the Party's general fund, will be responsible for the payment of this annual assessment whether or not the Project Facilities are constructed, operating, damaged or destroyed, whether or not the Dedicated Capacity of each Party established pursuant to section 7.3 is actually available to or utilized by the Party, whether or not water is available for diversion to the Project, and regardless of the occurrence of any Force Majeure event.

6.3.3. Notwithstanding anything to the contrary herein, each of the Parties shall be individually liable to the other Party for its failure to pay its respective share of the Agency's annual costs (including but not limited to debt service on any bonds or related obligations). In the event that a Party fails to make any payment of such costs (a "Defaulting Party"), the non-defaulting Party may make such payment on behalf of the Defaulting Party, but the Defaulting Party shall remain obligated to reimburse the non-defaulting Party for such advance with interest calculated at one and one-half the rate of return earned by the treasury of the non-defaulting Party during the time period of the default. If the Defaulting Party has not repaid the non-defaulting Party for such advance by the end of the fiscal year in which the default first occurs, the non-defaulting Party may take such legal action as it deems appropriate to enforce payment of such obligation.

6.3.4. Any payment remaining unpaid by a Party 30 days after its due date shall bear interest at the rate of one percent per month beginning on the due date. In the event of such a default, in addition to any other remedy that may be available, the Agency may cease providing water to the Defaulting Party until the delinquent amount with interest has been paid in full.

6.4. Revenue Deficit. If insufficient revenue is collected by the Agency to satisfy all of its annual costs (other than by reason of a failure of any Party to pay its share of costs), then such deficiency will be assessed by the Agency against all Parties in the same manner as costs were allocated to each Party for the fiscal year in which such deficit was incurred.

6.5. Budget Reserves and Excess Revenues. The 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 Agency. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Agency. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Agency 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 Party's respective assessment for such subsequent fiscal year.

6.6. Annual Budget. Within 90 days after the first meeting of the Board, and thereafter prior to the commencement of each fiscal year, the Board shall adopt a budget, including a projection of Capital Costs, Fixed Operating Costs, Variable Operating Costs and Repair and Replacement Costs for the Project for the ensuing fiscal year plus an amount to fund a contingency reserve. The budget also shall include a forecast of the

Agreement payment obligations for each of the Parties for the subsequent four years. After the adoption of the initial budget, if the Board because of a tie-vote or other reason fails to timely approve an annual budget, then the prior year's annual budget (plus a cost of living adjustment for expenditures to reflect the prior year's change in the Consumer Price Index for All Urban Consumers for the west urban area as reported by the U.S. Bureau of Labor Statistics) shall continue in effect until superseded by a new Board-approved budget and the former budget shall provide appropriation Agency for ongoing Agency expenditures consistent with that budget, as adjusted.

6.7. Reconciliation of Fixed and Variable Costs. As soon as practicable following the commencement of a fiscal year, the Board shall, upon recommendation of the Treasurer, reconcile Capital Costs, Fixed and Variable Operating Costs and Repair and Replacement Costs for the prior fiscal year. The amount so reconciled shall then be factored into the calculation of projected Capital Costs, Fixed and Variable Operating Costs and Repair and Replacement Costs for the next fiscal year.

6.8. Accounting Procedures. The Agency shall keep and maintain strict accountability of all funds, receipts and expenses, and shall keep and maintain appropriate records and accounts of all funds, receipts and expenses under this Agreement in accordance with accounting and bookkeeping practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall comply strictly with requirements of the Act. The Agency shall allow any Party, or any of its employees, accountants, attorneys or agents to review, inspect, copy and audit any such records and accounts, including source documents.

6.9. Assets. The Agency shall maintain records of all vehicles, apparatus, equipment and other assets and property contributed by each Party.

6.10. Expenditures. The Board shall establish and comply with a system and procedure for the review and approval of Agency expenditures and claims and the drawing and signing of Agency warrants or checks. All expenditures shall be consistent with the approved budget, except as otherwise determined by the Board.

6.11. Audit. Annually, biennially, or on any longer period as permitted by law, the Board shall contract with an independent certified public accountant to perform a financial audit of the accounts and records of the Agency. Copies of such audit reports shall be filed with each Party and Participating Agency and, if required, with the State Controller within six months of the end of the audited fiscal year, or such other period permitted or required by law.

7. PROJECT FACILITIES AND CAPACITY.

7.1. Authorized Project Facilities. Subject to the restrictions and limitations of this Agreement and the completion of the Environmental Documentation and Permitting, and as required by law, the Agency is authorized to implement and undertake the acquisition of water rights and water supply contracts, design, Final Engineering, financing, property and rights-of-way acquisition, Construction, operation, maintenance and management of and for the Project Facilities. Following Construction of the Initial Project Facilities, the Agency may expand, add to or increase the capacity of the Project Facilities as may be determined by the Board.

7.1.1. The overall Project service area and water right place of use are shown on Exhibit B, attached hereto and incorporated herein. The Project service area shall expand concurrent with the annexation of territory to either Party or the expansion of the UC Davis campus boundaries by UC Davis (subject to UC Davis' timely exercise of its option to participate in the Project pursuant to the terms of the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract dated December 21, 2010, as amended). The Project service area and water right place of use also may be expanded by the Board from time to time. Each of these types of expansions is subject to State Water Resources Control Board approval of any change in the authorized place of use in any applicable water-right permit or license.

7.1.2. The final Project design plans shall include fixed points of delivery of water from the Transmission Piping to each Party's local distribution facilities.

7.1.3. The Agency may provide Project-related technical and other services and activities that benefit only one of the Parties, so long as the Party benefiting from the work pays the full costs of the services.

7.2. Expenditure Controls. The Agency shall secure the written approval of the City Council of each Party before proceeding with the award of any contract for Final Engineering or Construction of the Initial Project Facilities. The remaining City Council approvals will be provided pursuant to the Project Facilities Milestone Schedule that is attached as Exhibit C. After securing these approvals, further City Council approval will not be required as a precondition to Board actions and decisions under this Agreement.

7.3. Dedicated Capacity.

7.3.1. Upon Completion of Construction of the Initial Project Facilities, each Project Participant shall be entitled to exclusive use of the Dedicated Capacity in the Project Facilities as set forth in the table below without regard to whether the Project Participant actually uses such facilities for the delivery of water. The daily flow limits in the table below are based on an Initial Project Facilities capacity of 30 mgd. The actual total capacity of the as-built Regional Water Treatment Facility will be rated by the California Department of Public Health following required testing of the plant construction. If the total rated daily flow limit capacity differs from the total daily flow limit amount presented in the table below, then each Project Participant's daily flow limit shall be adjusted accordingly and proportionately based on the percentage shares below.

Dedicated Capacity Shares		
Project Participant	Daily Flow Limit*	Percentage Share
Davis	12 mgd	40%
Woodland	18 mgd	60%
Total	30 mgd	100%

* The daily flow limits in this table are based on an Initial Project Facilities capacity of 30 mgd.

7.3.2. If the Agency expands the Project Facilities to produce greater than 30 mgd, then the foregoing daily flow limits in mgd as well as the corresponding percentages shall be adjusted as determined by the Board; however, the quantity (mgd) of Dedicated Capacity allocated to UC Davis and the annual limit for UC Davis shall not be increased without its written consent (i.e., if UC Davis chooses not to consent to and participate in a Project expansion, then its Dedicated Capacity and annual limit would remain fixed and its percentage share of the expanded Project would be reduced accordingly or the percentages may be revised by written agreement between the Parties and UC Davis to reflect a different basis for calculation).

7.4. Water Delivery. After Completion of Construction of the Project Facilities, the Agency shall make available and deliver to each Project Participant a total amount of treated water up to its respective Dedicated Capacity shares, subject to the terms and conditions of this Agreement and the availability of water. The water shall be delivered to the points of delivery as shown on the final Project plans and specifications. The Agency shall deliver treated water that meets all state and federal drinking water quality standards applicable to the Project at the time of the delivery. The Agency shall consult with the Project Participants on a regular basis to determine specific schedules of deliveries, and, consistent with the terms of this Agreement, the Agency shall use its best efforts to meet the requirements of the Project Participants. If a Project Participant does not desire or take its full entitlement of available water, then the amount of water not delivered to that Project Participant may be made available at no cost for the raw water and delivered to other Project Participants that are interested in additional water deliveries. The Agency shall keep and maintain a monthly schedule of the actual quantities of water delivered to each of the Project Participants.

7.5. Changes in Dedicated Capacity Shares.

7.5.1. The Parties' respective Dedicated Capacity shares may be changed by unanimous Agency Board approval. The UC Davis Dedicated Capacity share shall not be changed without UC Davis' prior written consent and unanimous approval by the Agency Board.

7.5.2. Any two or more of the Project 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 Project 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 Project Participants and filed with the Agency. If temporary, the writing shall indicate the effective dates of the redistribution. The redistribution also may reallocate the Project Participants' respective payment shares under section 6.1, in which case the writing also shall indicate the changes to the section 6.1 shares, whether temporary or permanent, and, if temporary, the effective dates of the changes.

7.6. Reduction in Availability of Project Water. If, for any reason (including, but not limited to, water supply availability, drought, restrictions on diversion, regulatory requirements, damage, or maintenance), the daily water available for delivery is less than 30 mgd (or an expanded Project capacity as later may be approved by the Board) at any time, and such reduction is not due to an act or omission of any Project Participant, then the available water supply shall be allocated among the Project Participants based on their percentage shares of Dedicated Capacity as set forth in section 7.3 or on such other allocation as may be determined by the Board. If, for any reason, the annual water delivery capacity of the Project Facilities is less than 46,137 af/yr, and such reduction is not due to an act or omission of any Project Participant, then the annual amounts of available water shall be allocated among the Project Participants based on the percentage shares of Dedicated Capacity as set forth in section 7.3 or on such other allocation as may be determined by the Board. If reductions in both the daily water delivery capacity and the annual limit occur, then available daily water delivery capacity shall be allocated first, and the available annual limit then shall be allocated in a manner that is consistent with the allocated daily water delivery capacity. If the reduction is due to an act or omission of a Project Participant, then that Project Participant shall be responsible for absorbing the amount of the reduction attributable to its act or omission from its share of Dedicated Capacity or annual limit.

7.7. Ownership of Project Facilities. Except as otherwise provided by section 6.2, all Project Facilities, lands and easements shall be owned by and held in the name of the Agency for the benefit of the Project Participants in accordance with the terms of this Agreement.

8. NONPARTICIPATION BY A PARTY

8.1. Party Commitment to Project. By approving the 2013 Amended and Restated Joint Powers Agreement, each Party commits to proceeding with the design, Construction and operation of the Initial Project Facilities and to funding the Capital Costs of the Initial Project Facilities on and subject to the terms of this Agreement; however, the City of Davis commitment also is subject to the approval by its voters of the Project-related measure at a March 5, 2013 special election. Each Party approves the Project Facilities Milestone Schedule ("Schedule") that is attached as Exhibit C and each Party shall diligently and in good faith strive to take and implement the Schedule actions in accordance with the Schedule deadlines.

8.2. Missed Deadline. If a Party fails to take an action in accordance with the Schedule (which includes the failure of the Board to timely approve a contract to design and construct the Project Facilities due to the failure of a Party's Directors to vote in favor of the contract), the other Party may give written Notice of Missed Deadline to the Party missing the deadline. The Notice of Missed Deadline will inform about the nature of the missed deadline, state the noticing Party's intention to proceed with the Project alone under this section 8, and provide the other Party with 20 days to cure the missed deadline. If the Party missing the deadline fails to satisfactorily cure the matter within the 20-day cure period, then the other Party (the "Participating City") may give written notice (the "Go-It-Alone Notice") to the Agency Secretary and the Party missing the deadline (the "Nonparticipating City") that the Participating City is exercising its option to proceed with the Project alone pursuant to this section 8. On the first day of the month following receipt of the Go-It-Alone Notice by the Secretary, sections 8.3 through 8.10 will apply to the Project and the contractual relations between the Parties and the Agency. If there are any irreconcilable inconsistencies between this section 8 and another provision of this Agreement, section 8 will govern.

8.3. Board Action. The Board of Directors will continue to be a four-member Board; however, for the purposes of transacting any business of the Board pertaining directly or indirectly to the Project (including Construction, operation, expansion and financing related decisions), the Nonparticipating City shall be entitled to only one vote, a quorum shall consist of the two Directors who represent the Participating City, and an affirmative vote by the two Directors who represent the Participating City shall be required for any Board action. The Chair and Vice-Chair do not need to alternate between the Parties. The Nonparticipating City shall notify the Agency Secretary and the Participating City of which Director from the Nonparticipating City will exercise the Nonparticipating City's sole vote. For the sake of clarity, the intent of this paragraph is that the Nonparticipating City not be able to prevent the Participating City or the Agency from proceeding with the Project.

8.4. Modification of Project Facilities. The Board will modify the scope and design of the Project Facilities so that the Project Facilities are reduced to provide capacity and water supply for only the Participating City, including, but not necessarily limited to, a reduction of the Regional Water Treatment Facility capacity to a size as determined by the Board and removal of the Transmission Piping for the Nonparticipating City. The Agency will proceed with the design, Construction and operation of the modified Project Facilities for the sole use and benefit of the Participating City.

8.5. Dedicated Capacity and Use of Project Facilities. All Agency lands, easements, Permitting, contracts, staffing, Agency funds and reserves on hand and other assets will be provided for the sole benefit and use of the Participating City. Upon Completion of Construction of the modified Project Facilities, all Project Facilities and the full Dedicated Capacity of the Project Facilities will be provided for the sole benefit and use of the Participating City.

8.6. Water Rights. The full water supply available under Agency Water Right Permit 20281 will be provided for the sole use (through the Agency) of the Participating City. Regarding the water supply available under Agency Water Right Licenses 904A and 5487A and the Water Agreement with Conaway Preservation Group, LLC dated December 29, 2010, as amended, the Participating City will be entitled to the sole use (through the Agency) of the portion of the water supply attributable to the Participating City's percentage in the table in section 6.1.5.

8.7. Cost Allocation. Starting on the first day of the month following the Go-It-Alone Notice, the Participating City will be solely liable and responsible for all Agency and Project Capital Costs, Fixed Operating Costs, Variable Operating Costs, Repair and Replacement Costs and other costs and expenses; except that the Nonparticipating City will remain liable for payment to the Agency for (a) its share of Agency and Project costs incurred prior to the first day of the month following the Go-It-Alone Notice (as calculated, charged and assessed pursuant to section 6), and (b) its share of the annual note payments for the purchase of the water rights (which are now Agency Water Right Licenses 904A and 5487A) from Conaway Preservation Group, LLC under the Water Agreement dated December 29, 2010, as amended, and related promissory notes and in accordance with the Schedule of Installment Payments attached to the Installment Purchase Agreement dated December 21, 2010, as amended, between the Nonparticipating City and Agency.

8.8. Reimbursement for Redesign Costs. If, after April 2, 2013, a Party fails to take an action in accordance with the Schedule and the other Party gives a Go-It-Alone Notice pursuant to section 8.2, then the Nonparticipating City will pay or reimburse the Agency for the Agency's and Participating City's direct, actual and reasonable costs to redesign the Project Facilities for just the Participating City and including staff and administrative costs directly related to the redesign.

8.9. Limited Rights of Nonparticipating City. The Nonparticipating City will not receive any water supply from the Project, it will not have any Dedicated Capacity in the Project Facilities, and it will not have any intake and diversion capacity in the Raw Water Intake. The Directors representing the Nonparticipating City will have limited voting rights on the Board as indicated by section 8.3. Regarding the Nonparticipating City's portion of the Agency's rights under Agency Water Right Licenses 904A and 5487A and the Agency's Sacramento River Water Rights Settlement Contract with the Bureau of Reclamation (if approved and executed), the Nonparticipating City will be entitled to divert and use (through facilities other than the Project Facilities), transfer, assign or sell the portion of these licenses and the portion of the Agency's base supply rights under this settlement contract that are equal to the Nonparticipating City's percentage in the table in section 6.1.5 (subject to the limitations in these licenses, the Bureau settlement contract and the Water Agreement with Conaway Preservation Group dated December 29, 2010, as amended and subject to all laws and regulatory requirements applicable to such use, transfer, assignment or sale). The Agency will make commercially reasonable and best efforts to work and cooperate with the Nonparticipating City in the event the Nonparticipating City desires to use, transfer, assign or sell its share of these rights. The Nonparticipating City's rights in the preceding sentences will include the rights to pursue short-term or long-term water transfers under its portion of these licenses and this settlement contract. The Nonparticipating City must pay all regulatory, environmental review, transactional and other costs and expenses associated with any such use, transfer, assignment or sale and it will be entitled to retain the net proceeds from any use, transfer, assignment or sale. The Nonparticipating City also must indemnify the Agency and hold it harmless from and against any liability, claims, damages, expenses, and costs arising out of any such use, transfer, assignment or sale. In the event the Nonparticipating City receives a bona fide offer from a third party for a transfer, assignment or sale under this section and the offer is acceptable to the Nonparticipating City, it will not proceed with the third party transaction without first offering the Participating City the opportunity to purchase the rights on the same terms and conditions offered by the third party. This right of first refusal shall be extended by the Nonparticipating City by giving written notice of the offer to Participating City with the opportunity to accept the offer in writing within 45 days after the date of the offer. In the event that the Participating City does not timely accept the offer, then the Nonparticipating City may proceed with the sale to the third party.

8.10. Re-participation by Nonparticipating City. If, following a Go-It-Alone Notice, the Nonparticipating City desires to re-participate in the Project, then it and the Participating City may negotiate a fair and equitable amendment of this Agreement to address the terms of such re-participation and buy-in to the Project Facilities. Re-participation by the Nonparticipating City will be allowed only pursuant to the terms of an amended Agreement mutually approved by the City Council of each Party. If the Nonparticipating City expresses an interest in re-participation, then the Participating City will negotiate in good faith on fair and equitable terms of an amended Agreement and will not unreasonably refuse re-participation by the Nonparticipating City.

9. INDEMNIFICATION.

9.1. By Agency. The directors, officers, employees, agents and volunteers of the Agency shall be entitled to defense and indemnification by the Agency as provided under Government Code title 1, division 3.6, part 2, chapter 1, article 4 (commencing with Section 825) and title 1, division 3.6, part 7 (commencing with section 995). The Agency shall indemnify, defend, protect, and hold harmless each Party, and its officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the Agency's performance under this Agreement or failure to perform under this Agreement. The Parties acknowledge that the Agency's insurance and indemnity-related costs will be costs of Agency operations for which they will be liable for under section 6.

9.2. By a Party. Each Party shall indemnify, defend, protect, and hold harmless the Agency and the other Party, and their respective directors, officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the Party's performance under this Agreement or failure to perform under this Agreement.

9.3. Survival. These indemnification obligations shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination.

9.4. Agency Not Liable for Operation Beyond Point of Delivery. The Agency and its directors, officers, agents, contractors, employees and volunteers shall not be liable for the control, carriage, handling, use, disposal, or distribution of Project water supplied to a Party after such water has passed the point of delivery to that Party, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond that point of delivery; and each Party shall indemnify and hold harmless the Agency pursuant to section 9.2 from any such damages, claims or liability. The Agency shall have no right, title or interest in Project water after the water has passed the point of delivery to a Party.

9.5. Parties Not Liable for Operation Upstream From Point of Delivery. A Party and its officers, agents, contractors, employees and volunteers shall not be liable for the control, carriage, handling, use, disposal, or distribution of Project water before such water has passed the point of delivery to the Party; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed that point of delivery; and the Agency shall indemnify and hold harmless the Party pursuant to section 9.1 from any such damages, claims or liability.

9.6. The indemnification and hold harmless provisions of this section 9 shall apply in lieu of the right of contribution provisions at Government Code Sections 895-895.8.

10. TERM, WITHDRAWAL AND DISSOLUTION.

10.1. Term. This Agreement and the Agency shall continue in existence until terminated and dissolved in accordance with the terms of this section 10.

10.2. Withdrawal Prior to April 2, 2013. Prior to April 2, 2013, either Party may terminate this Agreement and dissolve the Agency upon giving the other Party and the Board 90 days prior written notice of termination; provided, however, the Parties shall be obligated for their share of all liabilities and expenses of the Agency incurred prior to the effective date of such termination. If the Board has received such notice of termination, it shall be prohibited from issuing any bonded indebtedness or certificates of participation or awarding any contracts for Construction. If this Agreement is terminated pursuant to this section 10.2, then the Parties shall ask the State Water Resources Control Board to allocate any water right application or permit that is, or any water right applications or permits that are, held by the Agency among the Project Participants according to the percentages in Dedicated Capacity and the annual limits specified in the Woodland-Davis Clean Water Agency and University of California Agreement Concerning Potential Water Supply Contract dated December 21, 2010, as amended.

10.3. Dissolution After April 2, 2013. After April 2, 2013, this Agreement and the Agency may be terminated and dissolved by only by the mutual approval of the Parties expressed by resolution of the governing board of each Party approving a dissolution agreement pursuant to section 10.4. The Agency shall not be dissolved until all debts and liabilities of the Agency have been discharged or assumed in accordance with this Agreement and the dissolution agreement. During the outstanding term of any Agency bonds, certificates of participation or other indebtedness, this Agreement and the Agency shall not be terminated unless (a) the indebtedness is first paid off in full before the effective date of the termination, or (b) the indebtedness is assigned to and assumed by one or both of the Parties or a responsible successor entity and there is alternate security for the indebtedness in a form and manner approved by bond counsel selected by the Agency as lawful and adequately protecting the interests of any holders of evidence of indebtedness of the Agency.

10.4. Dissolution Agreement. Subject to section 10.3 above, this Agreement and the Agency may be dissolved pursuant to a dissolution agreement approved by both Parties that provides for the dissolution of the Agreement and Agency, the utilization, distribution, transfer and assignment of the funds, assets and property (including any completed or partially constructed Project Facilities) of the Agency, and the transfer and assignment of the rights, liabilities and obligations of the Agency. If, at the time of dissolution, the Agency has completed any Project Facility, then the dissolution agreement also must provide for one of the Parties or a responsible successor entity to assume the rights, liabilities and obligations to continue the operation and maintenance of the Project Facility or Facilities. The dissolution agreement also must provide for the transfer and assignment of the Agency water right permits and licenses to the Parties or a responsible successor entity that will hold, maintain and exercise the permit or license for the benefit of the Project Participants. Any such water right transfer and assignment would be subject to approval by the State Water Resources Control Board, if required. If, at the time of dissolution, the Agency is a party to a water supply agreement with UC Davis, then the dissolution agreement also must provide for one of the Parties or a responsible successor entity to assume the rights, liabilities and obligations under the UC Davis water supply agreement and to continue to provide water to UC Davis. Upon dissolution of the Agency pursuant to a dissolution agreement approved pursuant to this section, the funds, assets, property, rights, liabilities and obligations of the Agency shall be utilized, distributed, transferred and assigned as provided by the dissolution agreement.

11. GENERAL PROVISIONS.

11.1. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

11.2. Construction and Interpretation. It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

11.3. Waiver. The waiver at any time by any Party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

11.4. Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either Party of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

11.5. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

11.6. Successors and Assigns. Except as otherwise provided by law or legally ordered by the Yolo County Local Agency Formation Commission as part of a local government organization or reorganization proceeding, the rights and duties of the Parties under this Agreement shall not be assigned or delegated without the prior written consent of the other Party. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Agency then in effect, and may be subject to such additional reasonable conditions of approval imposed by the Party approving the assignment or delegation.

11.7. No Third Party Beneficiaries. This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

11.8. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved by the governing board of each Party and executed by both Parties. The addition of new parties to the Agency shall require an amendment of this Agreement.

11.9. Governing Law. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yolo shall be venue for any state court litigation and the Eastern District of California shall be venue for any federal court litigation concerning the enforcement or construction of this Agreement; provided, however, that, for state litigation, each Party retains its rights under Code of Civil Procedure Section 394 to change venue or to assign an out-of-county judge.

11.10. Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

Davis: City Manager City of Davis 23 Russell Boulevard Davis, CA 95616	Woodland: City Manager City of Woodland 300 First Street Woodland, CA 95695

Any Party may change its address by notifying the other Party in writing of the change of address.

11.11. Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

CITY OF DAVIS	**CITY OF WOODLAND**
______________________	______________________
Mayor	Mayor
Attest:	Attest:
______________________	______________________
City Clerk	City Clerk
Approved as to form:	Approved as to form:
______________________	______________________
City Attorney	City Attorney

LIST OF EXHIBITS

EXHIBIT A

List of Davis-Woodland Water Supply Project Facilities

Agency facilities -- Project facilities to be constructed, owned and operated by the Agency:

1. Regional Water Treatment Facility
2. Raw Water Intake
3. Agency-Only Intake Facilities
4. Raw Water Transmission Main
5. Joint Transmission Piping
6. Davis Transmission Piping
7. Woodland Transmission Piping

EXHIBIT B

Project Service Area and Water Right Place of Use

[Attached on the following pages]

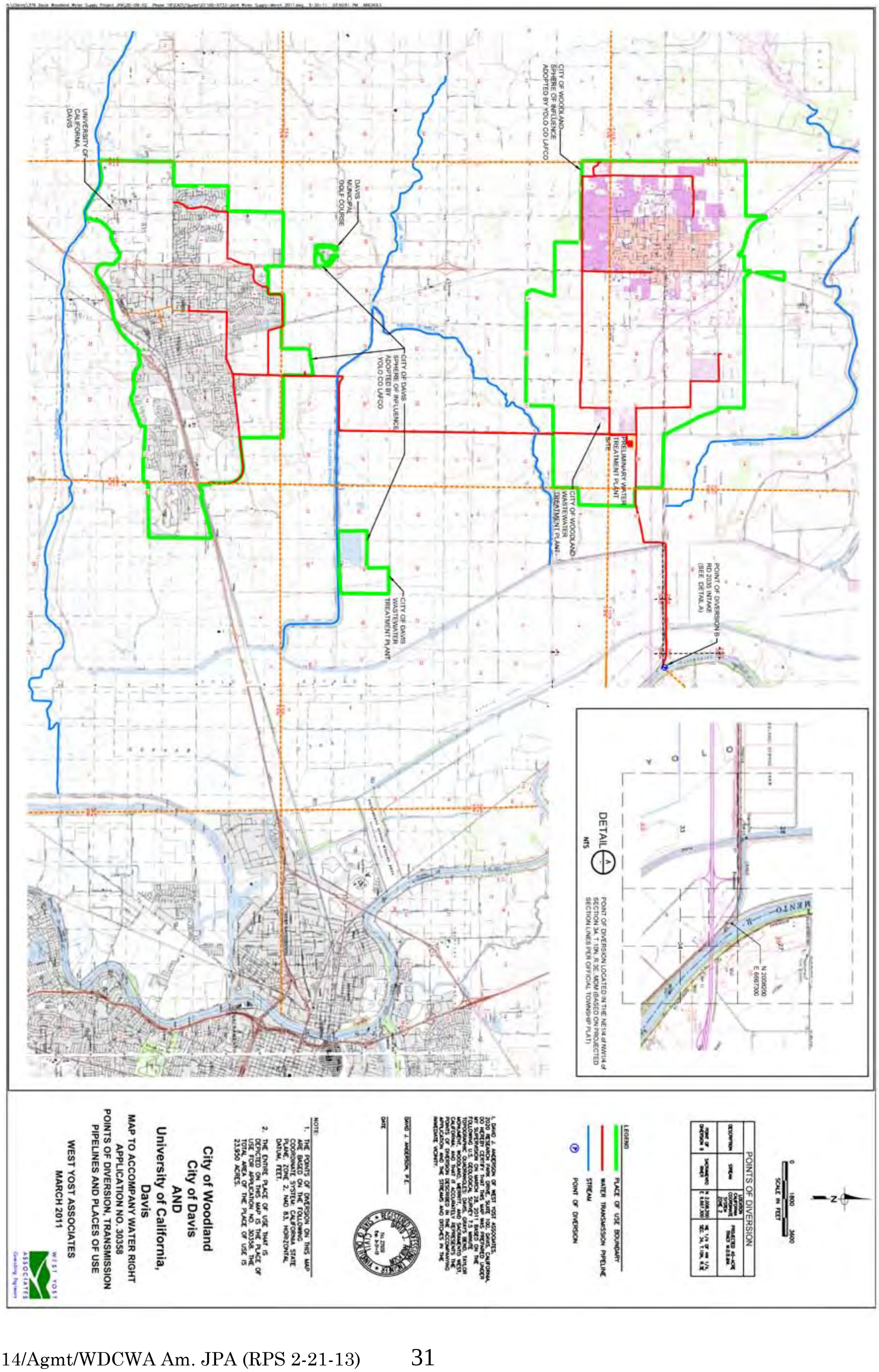
CITY OF WOODLAND SPHERE OF INFLUENCE ADOPTED BY YOLO CO LAFCO
UNIVERSITY OF CALIFORNIA, DAVIS
DAVIS MUNICIPAL GOLF COURSE
CITY OF DAVIS SPHERE OF INFLUENCE ADOPTED BY YOLO CO LAFCO
PRELIMINARY WATER TREATMENT PLANT SITE
CITY OF WOODLAND WASTEWATER TREATMENT PLANT
POINT OF DIVERSION B - RD 2035 INTAKE (SEE DETAIL A)
CITY OF DAVIS WASTEWATER TREATMENT PLANT
DETAIL A
NTS
POINT OF DIVERSION LOCATED IN THE NE1/4 of NW1/4 of SECTION 34, T 10N, R 3E, MDM (BASED ON PROJECTED SECTION LINES PER OFFICIAL TOWNSHIP PLAT)
N 2006000
E 666700
SCALE IN FEET
0
1800
3600
POINTS OF DIVERSION
LEGEND
PLACE OF USE BOUNDARY
WATER TRANSMISSION PIPELINE
STREAM
POINT OF DIVERSION
DAVID J. ANDERSON, P.E.
DATE
NOTE:
1. THE POINTS OF DIVERSION ON THIS MAP ARE BASED ON THE FOLLOWING COORDINATE SYSTEM: CALIFORNIA STATE PLANE, ZONE 2, NAD 83, HORIZONTAL DATUM, FEET.
2. THE ENTIRE PLACE OF USE THAT IS DEPICTED ON THIS MAP IS THE PLACE OF USE FOR APPLICATION NO. 30358. THE TOTAL AREA OF THE PLACE OF USE IS 23,950 ACRES.
City of Woodland
City of Davis
AND
University of California, Davis
MAP TO ACCOMPANY WATER RIGHT APPLICATION NO. 30358
POINTS OF DIVERSION, TRANSMISSION PIPELINES AND PLACES OF USE
WEST YOST ASSOCIATES
MARCH 2011

EXHIBIT C

Project Facilities Milestone Schedule

Action	Deadline
City of Davis election concerning the Project	March 5, 2013
Davis City Council approval of (1) water rates to fund its share of the Capital Costs of the Project Facilities, and (2) resolution authorizing design and construction of the Project Facilities*	April 2, 2013
Woodland City Council approval of resolution authorizing design and construction of the Project Facilities*	April 2, 2013
Davis City Council authorization to issue and sell bonds or certificates of participation to fund its share of the Capital Costs of the Project Facilities	August 15, 2013
Woodland City Council authorization to issue and sell bonds or certificates of participation to fund its share of the Capital Costs of the Project Facilities	August 15, 2013
Approval by Agency Board to award a contract to design and construct the Project Facilities	September 30, 2013

* The city council authorization to construct the Raw Water Intake portion of the Project Facilities will be subject to State of California approval of grant funding of at least $16.7 million toward the Capital Costs of the Raw Water Intake, or Board action to waive this condition regarding State of California grant funding.