



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: July 21, 2009

SUBJECT: Approve in Concept a Draft Joint Powers Agreement for the Davis-Woodland Water Supply Project

Report in Brief

All levels of government use Joint Powers Authorities (JPA) to tackle common problems and provide regional services. JPAs are created to increase efficiency and reduce cost through sharing and combining resources and reducing overlap of efforts. A Davis-Woodland Water Supply Project (DWWSP) JPA will focus on the formation, organizational structure, and implementation strategies for project execution and future management oversight and governance of the regionally shared systems. This JPA would establish the focus to resolve a regional problem and improve the project's chances to receive supplemental grant funds. The JPA would also manage and execute decisions to plan, schedule, design, construct and operate the project under the oversight and funding approved by the Davis and Woodland City Councils.

At the June 23, 2009 Council Study Session for the Davis-Woodland Water Supply Project (DWWSP), Council received information on the project team's review efforts and recommendation for forming an independent Joint Powers Authority (JPA) with the City of Davis as the most effective, efficient and mutually desirable organizational structure and approach for implementing the project. Participating agencies under the JPA would also include the University of California at Davis (UC Davis), Reclamation District (RD) 2035, and the Yolo County Flood Control and Water Conservation District (YCFCWCD). Council direction to staff at the June 23 meeting was to revise and submit a final recommended draft Joint Powers Agreement for Woodland City Council to consider at this meeting in preparation for the scheduled joint Woodland-Davis Council Workshop on July 28, 2009.

Staff recommends City Council approve, in concept, the revised draft Davis-Woodland Water Supply Joint Powers Agreement included as Attachment No. 1 for presentation at the July 28th Joint Council Workshop.

Background

The cities of Davis and Woodland, in coordination with the University of California, Davis (“UC Davis”), and the Yolo County Flood Control and Water Conservation District (“Flood Control District”), have been cooperating in the planning and development of a regional treated surface water supply project pursuant to a series of memoranda of understanding. Under the 2005 Memorandum of Understanding, the City of Davis served as lead agency under the California Environmental Quality Act (“CEQA”) in the preparation of an environmental impact report for the 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. The approved preferred project alternative involves the diversion of water from the Sacramento River, treatment at a regional treatment plant, and delivery of treated water to the Davis and Woodland communities. On November 6, 2007, the Woodland City Council adopted findings as a CEQA responsible agency with respect to the Final EIR and approved the preferred project alternative.

Following certification of the Final EIR, city staffs began discussions concerning the appropriate mechanism, approach, or organization to implement subsequent Project phases. This principally involved water right permit application processing, water supply contracts for summertime diversion, financing, engineering, rights of way acquisition, permits, construction, and operation. The city staffs have determined that a Joint Powers Authority is the most appropriate means to implement the Project. In order to assist the city councils with the evaluation of the JPA recommendation and other options, staff has provided a summary of the pertinent issues.

UC Davis also continues to be a Project participant with a 3.5% interest. The city staffs contemplate that the cities first will decide on and approve an appropriate joint powers agreement to further pursue and implement the Project. Thereafter, the JPA created by the cities would negotiate a water supply contract with UC Davis concerning its participation in the Project.

Joint Powers Agreements

The Joint Exercise of Powers Law (Government Code section 6500 et seq.) (“JPA Act”) authorizes two or more state and/or local governmental agencies to enter into a joint powers agreement to jointly exercise any power common to the contracting parties. There are two types of joint powers agreements. Under one type of agreement, the government agency parties contract under the JPA Act to create a new government agency, known as a joint powers authority (sometimes also known as a joint powers agency). A JPA is a legal entity separate and distinct from the member agencies that created it.

Under the other type of joint powers agreement, the parties do not create a separate JPA. Instead, the agreement delegates to one of the parties the power and responsibility to perform some task and/or exercise some power on behalf of all the parties, usually subject to some oversight and control by a governing board or other mechanism established by the agreement.

With both types of agreements, the joint powers agreement can provide for and implement only those governmental powers held in common by the contracting agencies. For example, Woodland and Davis have in common the power to provide water service and develop and operate a water supply project. Multiple government agencies often implement a large water project through a joint powers agreement.

The process to form a JPA for the Water Supply Project is as follows: negotiate, approve and execute a joint powers agreement, file a notice with the Secretary of State, and file a statement of information with the Secretary of State and Yolo County Clerk. After the formation of the JPA, there would be several start-up related actions to be undertaken.

Advantages and Disadvantages of Joint Powers Authorities

Joint Powers Authorities have both advantages and disadvantages:

Advantages

- A JPA is flexible and easy to form and modify. The JPA Act permits the member agencies to negotiate their levels of commitment and structure their own procedures, policies, and governing boards.
- A JPA may be more efficient than separate governments. It allows local agencies to join forces and tackle issues together. The personnel, expertise, equipment, and property of each agency can be consolidated, promoting economy and efficiency.
- A JPA may finance a public works project and provide working capital by selling bonds.
- A JPA may issue revenue bonds. State law allows the issuance of revenue bonds without an election so long as each member agency adopts a local ordinance authorizing the bonds.
- A JPA may cooperate on regional solutions and serve as a public forum for regional problems, providing different communities and residents with the opportunity to focus on regional issues.
- A JPA may help communities obtain federal and state grants and loans. Many grant and loan programs favor regional approaches and solutions. A joint powers authority approach on a regional project helps local agencies show the grant and loan agencies that they are willing to cooperate on regional problems, as opposed to competing with each other for grant and loan funds for separate projects.
- A JPA may own and manage real property and public works project facilities.

Disadvantages

- A JPA requires mutual trust to form. Getting separate local agencies to cooperate can be hard because each organization has its own powers, purposes, and politics. Sometimes it takes a long time to build the trust that is needed before public officials are ready to sign a joint powers agreement that puts the common regional good ahead of an individual agency's needs or interests.
- A JPA can be hard to keep together. Because a joint powers agreement is merely a voluntary relationship among the member agencies, local problems may threaten to split up the authority. Changes in local public support, new political leaders, or financial pressures may cause a member agency to reconsider participating in the authority. If a member agency withdraws, the departure may harm outstanding authority bonds. Additionally, a member agency may withdraw from a JPA after substantial expenditures have been made on a project.
- A JPA can be hard to dissolve. To avoid the financial problems that can result if a member agency withdraws, some joint powers agreements include specific protocols (e.g., long period of advance notice) that make it difficult to dissolve the authority. Furthermore, when a JPA issues bonds, sometimes the agreement makes it difficult to dissolve the authority while the bonds remain outstanding.
- A JPA can be viewed as an additional and unnecessary layer of government. When agencies combine forces to create a separate government agency to provide a service or project, the purpose, visibility, and accountability of the JPA may not be readily apparent.
- A JPA is a new local government agency that must comply with laws, regulations, and appropriate business practices pertaining to local agencies, e.g., Brown Act, Secretary of State filings, FPPC Form 700 and conflict of interest rules, insurance, financial reports.

For more background on joint powers agreements and joint powers authorities, see Governments Working Together: A Citizen's Guide to Joint Powers Agreements prepared by the Senate Local Government Committee (August 2007), available at the following website:

www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/LOC_GOV/home/PUBLICATIONS.HTP

Discussion

Staff and the project team's legal representatives evaluated options, considered the advantages and disadvantages of sample agreements, reviewed various organizational structures that were similar to the proposed regional water supply project, and compared/contrasted other JPAs involving water projects. Options considered included: (1) Form a new special district to lead and own the project; (2) Expand and use the Yolo County Flood Control and Water Conservation District to lead and own the project; (3) One City owns and leads the project and supports the other partner and participants

through a water supply agreement; (4) One City owns and leads the project and supports the other partner and participants through a Joint Powers Agreement; and (5) A Joint Powers Agreement establishes a separate Joint Powers Authority to own and lead the project to support all parties. The analysis of these options revealed the following:

- Forming a new special district is not favored because: (1) the action would be subject to approval by the Yolo County Local Agency Formation Commission, resulting in another significant government approval precondition for the Project; (2) the LAFCO Board contains representatives of the county and other cities that do not have a financial interest in the Project but that would have approval authority; (3) there already is a countywide water agency (Flood Control District) that could manage the Project and LAFCO therefore might be reluctant to form another water district; and (4) the new district, not directly controlled by the cities, would own the Project.
- Contracting with the Flood Control District for the Project is not favored because: (1) the Flood Control District Board of Directors is governed principally by leadership that is not connected to the provision of urban water services; (2) the cities would lose control over Project design, costs, construction, etc.; and (3) the Flood Control District would own the Project.
- A JPA or water supply agreement between the two cities that designates and empowers one of the cities to implement the Project is not favored because: (1) one city would need to take the lead on financing and building the entire Project; (2) the city not financing and building Project could lose control over Project design, costs, construction, etc.; and (3) one city would own the Project and the other would not.
- A JPA that creates a new joint powers authority to finance and build the Project *is* favored for the following reasons:
 - It is a proven method used on other water projects;
 - It is an appropriate approach when neither city is the obvious or logical lead agency;
 - It is a flexible mechanism for the cities to develop and create a local government agency targeted for the Project, and it is easily modified by the cities;
 - The cities can share Project responsibility and costs on mutually agreeable terms as negotiated and memorialized in the agreement;
 - A joint powers agreement can be structured in order for the cities to retain substantial control over the Project;
 - A JPA has attractive revenue bond options;
 - A regional JPA approach may assist the cities in obtaining financial grant and loan assistance for the Project; and

- A JPA would be a neutral agency that can own the Project and hold and manage the water rights (both permitted and contracted) for the mutual benefit of the members.

Following the analysis of the project, with staff input and comments, Dick Shanahan of Bartkiewicz, Kronick, and Shanahan (BKS) developed a proposed draft Joint Powers Agreement primarily configured from a similar joint project in Freeport. Following the June 23, 2009 Council Study Session presentation of that draft agreement and receipt of Council feedback, the attached draft Joint Exercise of Powers Agreement was prepared for presentation to the Council for approval in principal. The submitted draft JPA Agreement (Attachment 1) is based on feedback and review comments from Woodland and Davis staff and both city attorneys.

During the June 23rd Study Session, Mr. Shanahan led the Council through the proposed JPA Agreement with a section-by-section explanation of the purpose and highlights of the more significant provisions. Mr. Shanahan has prepared an executive summary to document that discussion and it has been attached (Attachment 2) to assist the City Council and the public in understanding the major provisions of the Agreement.

The principal purpose of the Agreement is to create the JPA and authorize, yet not require, the JPA to further pursue Project implementation. The draft Agreement would not bind either city to construct the Project until the point when the JPA issues financing for Project design or construction. Either city could terminate the agreement for any reason prior to issuance of debt. As further city control, each city council would need to authorize the following milestone actions: issuance of any debt; commencement of final Project engineering; and, commencement of Project construction.

The draft Agreement proposes a four-member board of directors, with each city appointing two council members to serve on the board and one alternate. Board action would require three votes. This structure is similar to the Freeport Regional Water Authority. This approach requires cooperation between the cities in order to avoid tie votes that would lead to no action being taken on the item under consideration.

As the city councils consider the governing board structure at the joint workshop, the council members may wish to consider alternative governance structures, such as the following:

- There could be a five-member board with the fifth member appointed by: (a) the four city council representatives on the Authority board; (b) the County Board of Supervisors; (c) the Flood Control District Board of Directors; (d) the Water Resources Association of Yolo County; or (e) UC Davis.
- There could be a five-member board with the fifth member appointed by one of the cities and with the fifth director alternating each year from city to city.
- There could be a larger even-numbered board of directors with each city continuing to have an equal number of directors, which could reduce the risk of tie votes.

- The Project manager (appointed by the four-member Authority board pursuant to the joint powers agreement) could decide tie vote situations.

Staff does not favor any of the alternatives described above. In fact, staff believes that a four member board comprised of equal representation from Woodland and Davis is appropriate and desirable. A four member board would require collaboration in order to implement the significant actions associated with the Water Supply Project.

City staff is requesting that the Council approve the draft JPA ‘in-concept’ due to the recognition that additional negotiations with the project partners are still on-going. The finalized version of the JPA will be brought back before Council for approval and signatures at a later date. If there have been substantial or material changes in the document between this Council meeting and the final version, staff will give Council an update and an opportunity for questions and comments.

Fiscal Impact

The Surface Water Project incurs no cost to the General Fund and there are no financial decisions or additional project costs associated with this recommendation to the City Council. Cost sharing for joint-funded work continues as outlined under the latest amendment to the Project Partner MOU, based on projected Project benefit, with Woodland’s share at 52.1%, Davis at 44.4% and UC Davis at 3.5%. Funding is two-thirds through the Water Enterprise, Fund 210, and one-third through the Water Development, Fund 584. Sufficient funding for Phase 1A of this project is budgeted and available in the current year budget and in the authorized and projected Capital Budgets for FY 09/10 and 10/11. Each Project Partner will separately approve the authorization and funding for all shared joint-funded project initiatives.

Public Contact

Posting of the City Council agenda and public presentation of the JPA concept at the June 23rd Council Meeting.

Council Committee Recommendation

The Infrastructure Committee supports moving this project action forward.

SUBJECT: Approve in Concept a Draft Joint Powers Agreement for
the Davis-Woodland Water Supply Project

PAGE: 8
ITEM:

Recommendation for Action

Staff recommends City Council approve, in concept, the revised draft Davis-Woodland Water Supply Joint Powers Agreement included as Attachment No. 1 for presentation at the July 28th Joint Council Workshop.

Prepared by: Dick Donnelly, P.E.
Deputy Public Works Director

Reviewed by: Gregor Meyer
Public Works Director

Mark G. Deven
City Manager

Attachments: 1. Joint Exercise of Powers Agreement
2. Summary Explanation of JPA, Section by Section – Richard P. Shanahan, BKS

**DAVIS – WOODLAND WATER AUTHORITY
JOINT POWERS AGREEMENT**

This Joint Powers Agreement is made this ___ day of _____ 200__ 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. “Agreement” means this Joint Powers Agreement.

1.3. “Authority” means the Davis – Woodland Water Authority created pursuant to this Agreement.

1.4. “Board” or “Board of Directors” means the governing body of the Authority as established by this Agreement.

1.5. “Capital Costs” mean the Project-related costs of Construction, financing, acquiring, planning, designing, and Environmental Documentation and Permitting (including any mitigation costs or filing fees related to Permitting), and the funding of a reasonable construction reserve. Capital Costs include both the Capital Costs of initial Project construction and subsequent Capital Costs of Project repair, replacement, modification and improvement. Capital costs include any one-time initial costs and payments under a water supply contract approved by the Authority, but not the on- going costs of water under a water supply contract.

1.6. “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.

1.7. “CEQA” means the California Environmental Quality Act.

1.8. “Effective Date” means the effective date of this Agreement and the Authority as provided in section 3.4.

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

1.10. “Director” means a member of the Board of Directors.

1.11. “District” means the Yolo County Flood Control and Water Conservation District.

1.12. “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.

1.13. “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.

1.14. “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.

1.15. “Fiscal Year” means July 1 through June 30 or such other period as the Board may determine.

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

1.17. “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.

1.18. “Individually-Owned Project Facility” means a Project Facility to be financed and constructed by the Authority as part of the Project, but to be owned and operated by one of the Project Participants as described on Exhibit A.

1.19. “mgd” means millions of gallons of water per day.

1.20. “Participating Agency” means UC Davis, the District, RD 2035 and any other participating agency approved pursuant to section 4.2.

1.21. “Parties” mean the Cities of Davis and Woodland. “Party” means either one of the Parties.

1.22. “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.

1.23. “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 any changes to this preferred alternative that are approved by the Authority.

1.24. “Project Facility” or “Project Facilities” means each facility or all facilities (as the case may be) identified as a Project Facility in Exhibit A, attached hereto and incorporated herein.

1.25. “Project Participants” mean the Parties and, subject to the timely approval of an Authority-UC Davis water supply agreement pursuant to section 7.6, UC Davis. If the Authority and UC Davis do not timely approve a water supply agreement pursuant to section 7.6, then UC Davis will not be considered a Project Participant. “Project Participant” means any one of the Project Participants.

1.26. “RD 2035” means Reclamation District 2035.

1.27. “UC Davis” means The Regents of the University of California acting for and on behalf of the University of California at Davis.

1.28. “Variable Operating Costs” mean those Project-related operating and maintenance costs and other costs that are dependent on, and vary based on, the volume of water actually conveyed through the Project (including, but not limited, to the costs of water (e.g., supplied under a water supply contract) and power).

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 is to provide a long-term, secure, reliable, high-quality water supply for the mutual benefit of the Parties. The objective is to provide a treated surface water supply for the Parties by 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 October 1, 2007), copies of which are on file with the City of Davis (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 Authority 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.

3. CREATION OF AUTHORITY.

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

3.2. Authority Created. There is hereby created a public agency to be known as the “Davis – Woodland Water Authority.” The Authority shall be a public agency separate from the Parties.

3.3. Liabilities. The debts, liabilities, contracts and obligations of the Authority shall be the debts, liabilities, contracts and obligations of the Authority alone. No debt, liability, contract or obligation of the Authority shall be or constitute a debt, liability, contract or obligation of the Parties or either of them. The Authority 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 Authority, but only the Parties 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 Authority shall be the date first set forth above, and this Agreement and the Authority 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 Authority shall be the Cities of Davis and Woodland.

4.2. Participating Agencies.

4.2.1. UC Davis, the District and RD 2035 shall participate as Participating Agencies with the Authority. UC Davis is a Participating Agency because it is anticipated that UC Davis will transfer and assign a pending water right permit application to the Authority and that UC Davis will become a Project Participant and receive Dedicated Capacity in the Project and a water supply from the Authority. District is a 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 is a Participating Agency because the Project may utilize its Sacramento River water

diversion/intake facility. The Authority Board may by resolution approve additional Participating Agencies.

4.2.2. Participating agencies shall be entitled to participate in open session Board meetings regarding the planning, design, construction and operation of the Project. Authority may consult from time to time with participating agencies regarding Project design, planning and implementation. Authority may cooperate and consult with the 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 an Authority-UC Davis water supply agreement.

4.3. Board of Directors. The Authority 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. Participating Agencies may appoint a ex officio 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, may not make or second motions and shall not have a vote..

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 may be a city council member or a city management employee. 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 Authority. Each Party shall give written notice to the Authority 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 and alternate Directors shall serve at the pleasure of the governing body of their appointing Parties 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 Authority for serving as such; however, a Director may be reimbursed for necessary and actual expenses incurred by such Director in the conduct of the Authority's business. Except as specifically provided in this Agreement, staff of the Parties shall not be compensated by the Authority for their time incurred on Authority business and affairs.

4.6. Board Action.

4.6.1. All the power and authority of the Authority 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. For the purposes of transacting the business of the Board, a quorum shall consist of three Board Directors. 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 Authority 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 December 31 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 Authority 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 Authority from whatever source, and shall draw all warrants and pay demands against the Authority as approved by the Board. The Treasurer shall cause an independent annual audit of the finances of the Authority 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.

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 Authority. The Secretary shall serve at the pleasure of the Board.

4.10.3. General Counsel. The General Counsel shall provide legal advice and services to the Authority. The General Counsel shall serve at the pleasure of the Board.

The Treasurer/Auditor, Secretary and General Counsel shall be appointed by the Board at its first meeting.

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 Authority for time spent on Authority matters.

4.11. Executive Committee. There shall be an Executive Committee consisting of each Party's public works director or his or her designee. The Executive Committee shall be responsible for monitoring the activities of the Authority on behalf of the Parties and making such reports as the Board deems appropriate. The Executive Committee may make recommendations to the Board with respect to the appointment and termination of the Authority Project Manager. The Executive Committee shall consult with and advise the Project Manager concerning Project design, planning and implementation. The Executive Committee may only take action through the agreement of both Parties.

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 or such Parties.

4.13. Project Manager. Within 90 days after the Effective Date, the Board shall appoint a Project Manager who shall be responsible to the Board for the proper and efficient administration of the Authority 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 Project Manager may be retained under contract with the Authority, be an employee of the Authority, or be an employee of one of the Parties. The Project Manager shall report directly to the Board and serve as staff for the Executive Committee and Authority. Any communications, correspondence or other material that is furnished to the Board by the Project Manager shall also be furnished to the Executive Committee unless the Project Manager is directed otherwise by the Board. The Project Manager shall serve at the pleasure of the Board. In addition to any other duties that may be assigned by the Board, the Project Manager shall have the following authority:

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

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 Authority;

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

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

4.14. Staff. A Party may assign its employees to serve as officers or perform other services for the Authority, subject to the approval of both the Authority and Party. The services of such assigned employees shall be at the expense of the contributing Party, unless the contributing Party and the Authority enter into a written agreement to reimburse the Party for the value of the services provided by the assigned employees. The Authority 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 Authority 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 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 Authority shall be exercised by the Board. Subject to the conditions and restrictions in this Agreement, the Authority, in its own name, shall have the power to implement and undertake the 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. The Authority 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 the services of engineers, attorneys, planners, financial consultants or other agents.

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 Authority 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 Authority and its property, officers, employees, contractors and agents.

5.2.14. To form and administer nonprofit corporations to do any part of what the Authority 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 Authority 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 Authority.

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

5.4. Use of Project Water. The Authority 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 Authority. 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 Authority's water right permit(s) or license(s).

6. ALLOCATION OF COSTS, FINANCE AND ACCOUNTING

6.1. Initial Advance. Upon the Effective Date, each Party shall forthwith advance to the Authority the sum set forth below as initial start-up funding for the Authority to be used until the adoption of the initial budget and payment of invoices as provided below. These amounts shall be applied as advances toward a Party's contribution for the first year's budget.

Davis	\$
Woodland	\$

6.2. Allocation of Costs. The costs incurred by the Authority in carrying out its functions shall be allocated between the Project Participants as follows:

6.2.1. Capital Costs. Capital Costs for the Project Facilities shall be allocated based on the following percentage shares:

Cost Category (see Ex. A for detailed explanation)	Percentage Share		
	Davis	Woodland	UC Davis
Project Facilities other than listed below	44.4%	52.1%	3.5%
Transmission piping from water treatment plant to Davis-area distribution system	92.7%	0%	7.3%
Transmission piping from water treatment plant to Woodland distribution system	0%	100%	0%
Davis Individually-Owned Project Facilities	100%	0%	0%
Woodland Individually-Owned Project Facilities	0%	100%	0%
UC Davis Individually-Owned Project Facilities	0%	0%	100%

These percentage shares shall apply to both the initial construction of the Project Facility and future capital costs relating to the repair, replacement, renovation, expansion, modification or improvement of the Project Facility. For the Individually-Owned Project Facilities, the percentage shares shall apply to initial construction only, because the Authority will not be responsible for future capital costs (see section 6.3).

In Final Engineering and Construction, the Authority shall keep and maintain accurate records showing and segregating the Capital Costs of the various Project Facility cost categories set forth above. In the Construction of the Project Facilities and preparation of bid and construction documents, the Authority shall proceed in such a manner as to enable it to determine and segregate these Capital Costs.

The foregoing table assumes that the Authority and UC Davis enter into a UC Davis water supply agreement pursuant to section 7.6. If such an agreement is not timely approved, then the following table shall apply:

Cost Category (see Ex. A for detailed explanation)	Percentage Share	
	Davis	Woodland
Project Facilities other than listed below	46.1%	53.9%
Transmission piping from water treatment plant to Davis-area distribution system	100%	0%
Transmission piping from water treatment plant to Woodland distribution system	0%	100%
Davis Individually-Owned Project Facilities	100%	0%
Woodland Individually-Owned Project Facilities	0%	100%

6.2.2. Fixed Operating Costs. Fixed Operating Costs shall be allocated based on the following percentage shares:

Davis	44.4 %
Woodland	52.1 %
UC Davis	3.5 %
Total	100%

The preceding table assumes that the Authority and UC Davis enter into a UC Davis water supply agreement pursuant to section 7.6. If such an agreement is not timely approved, then the following table shall apply:

Davis	46.1 %
Woodland	53.9 %
Total	100%

6.2.3. Variable Operating Costs. Variable Operating Costs for Project Facilities 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 the Board.

6.2.4. The Parties’ respective percentage shares in this section 6.2 may be changed by unanimous Authority Board approval. The UC Davis percentage shares shall not be changed without UC Davis’ prior written consent and Authority Board approval.

6.3. Individually-Owned Project Facilities.

6.3.1. The Individually-Owned Project Facilities (as described on Exhibit A) may be included as part of the Project and financed and constructed by the Authority. Upon completion of construction of any Individually-Owned Project Facility, the Authority 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 (as shown on Exhibit A) 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 Authority shall have no obligation to operate, maintain, repair, replace, modify or improve any Individually-Owned Project Facility.

6.3.2. For an Individually-Owned Project Facility (as described on Exhibit A), 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 6.2.1). After completion of initial construction and conveyance of the completed Individually-Owned Project Facility to a Project Participant (reference section 6.3.1), the Authority 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 Authority will not be responsible for the operation and maintenance of any Individually-Owned Project Facility, and the Authority shall not incur or allocate to the Project Participants any Fixed Operating Costs or Variable Operating Costs related to the operation and maintenance of any Individually-Owned Project Facility.

6.4. Payment Obligations.

6.4.1. Each of the Parties agrees to be responsible for paying its respective share of all costs of the Authority in accordance with the payment schedule adopted by the Board pursuant to section 6.4.2 below, and consistent with the cost allocation methodology set forth in section 6.2 and any bonds or certificates of financing issued or financing agreements entered into by Authority.

6.4.2. All costs of the Authority shall be annually assessed on the Parties by the Board in amounts sufficient to meet the obligations of the Authority for that fiscal year as set forth in the Authority’s annual budget. The Board also shall establish a payment schedule for each annual assessment consistent with the projected cash flow needs of the Authority and any bonds or financing agreements entered into by the Authority. Each Party 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.

6.4.3. 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 Authority'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.

6.4.4. 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 Authority may cease providing water to the Defaulting Party until the delinquent amount with interest has been paid in full.

6.5. Revenue Deficit. If insufficient revenue is collected by the Authority 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 Authority against all Parties in the same manner as costs were allocated to each Party for the fiscal year in which such deficit was incurred.

6.6. 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 Authority. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Authority. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Authority shall be considered excess revenue and, subject to any limitation in any bond or other financing agreement, carried forward as revenue for the next fiscal year and serve to reduce each Party's respective assessment for such subsequent fiscal year.

6.7. 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 and Variable Operating Costs for the Project for the ensuing fiscal year. 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 authority for ongoing Authority expenditures consistent with that budget, as adjusted.

6.8. 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 Fixed and Variable Operating Costs for the prior fiscal year. The amount so reconciled shall then be factored into the calculation of projected Fixed and Variable Operating Costs for the next fiscal year.

6.9. Accounting Procedures. The Authority 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 Authority 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.

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

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

6.12. Audit. Annual, bi-annually, 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 Authority. Copies of such audit reports shall be filed with each Party 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.

6.13. Capital Improvement Plan. The Authority shall adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and cost estimates of the Project Facilities. The first capital improvement plan shall be adopted within one year from the date of this Agreement. The capital improvement plan shall be updated every five years thereafter.

6.14. Pre-Effective Date Debts and Cost Sharing.

6.14.1. The Project-related debts, liabilities and obligations of each Party accrued prior to the Effective Date shall remain the debts, liabilities and obligations of that Party and shall not be assumed by or transferred to the Authority. After the Effective Date, any debt, liability or obligation of the Authority must be expressly approved or accepted by the Authority, and a Party's post-Effective Date debts, liabilities, obligations and assets shall remain that Party's debts, liabilities, obligations and assets unless expressly transferred to and accepted by the Authority.

6.14.2. The *Memorandum of Understanding for Environmental Review of the Yolo Regional Treated Surface Water Project* dated June 1, 2005, as amended by Amendment No. 1 dated October 1, 2007, shall continue to apply to and govern the cost sharing of Project-related costs accrued prior to the Effective Date. This Agreement shall apply to and govern the cost sharing of Project-related costs accrued after the Effective Date.

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 Authority 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. Authority shall pursue and implement the Project pursuant to the master schedule attached as Exhibit B and incorporated herein. The Authority Board may modify the Project schedule from time to time.

7.1.1. The overall Project service area and anticipated water right place of use are shown on Exhibit C, 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 the approval of an Authority-UC Davis water supply agreement pursuant to section 7.6). 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 a fixed point of delivery of water from the Authority transmission facilities to the each Project Participant’s local distribution facilities and there shall be an Authority meter and backflow prevention device at each point of delivery.

7.2. Expenditure Controls. The Authority shall secure the written approval of the City Council of each Party before (i) issuing any bonded indebtedness or certificates of participation, (ii) commencing Final Engineering, or (iii) commencing Construction.

7.3. Dedicated Capacity.

7.3.1. Upon completion of construction of the Project Facilities, each Project Participant shall be entitled to exclusive use of the following Dedicated Capacity in the Project Facilities without regard to whether the Project Participant actually uses such facilities for the delivery of water:

Davis	23 mgd	44.4%
Woodland	27 mgd	52.1%
UC Davis	1.8 mgd	3.5%
Total	51.8 mgd	100%

The Project Participants’ rights to receive treated water from the Project also are subject to the following annual limits: (a) Davis: 20,131 acre-feet per year (“af/yr”); (b) Woodland 24,006 af/yr; and (c) UC Davis: 2,000 af/yr. These annual limits will be calculated on a calendar year accounting period unless a different water-year accounting period is specified in the water-right permits or licenses for the Project.

7.3.2. Section 7.3.2 assumes that the Authority and UC Davis enter into a UC Davis water supply agreement pursuant to section 7.6. If such an agreement is not timely approved, then the following table and annual limits shall apply:

Davis	23.9 mgd	46.1%
Woodland	27.9 mgd	53.9 %
Total	51.8 mgd	100%

Annual limits: (a) Davis: 21,053 af/yr; and (b) Woodland: 25,084 af/yr.

7.3.3. If the Authority expands the Project Facilities to produce greater than 51.8 mgd or 46,137 af/yr, then the foregoing quantities (the daily limits in mgd or the annual limits in af/yr, or both) and 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). If the Authority constructs Project Facilities or a first phase Project of less than 51.8 mgd, then the foregoing percentage shares shall remain fixed and the daily and annual limits shall be adjusted accordingly.

7.4. Water Delivery. After completion of construction of the Project Facilities, the Authority 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 Authority 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 Authority 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 Authority 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 and delivered to other Project Participants that are interested in additional water deliveries. The Authority 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 Authority Board approval. The UC Davis Dedicated Capacity share shall not be changed without UC Davis' prior written consent and unanimous approval by the Authority 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 Authority. 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 6.2, in which case the writing also shall indicate the changes to the section 6.2 shares, whether temporary or permanent, and, if temporary, the effective dates of the changes.

7.6. UC Davis Water Supply Agreement. The Parties intend that the Authority will enter into a water supply agreement with UC Davis by which the Authority would agree to provide the treated water supply and Dedicated Capacity to UC Davis (subject to the limitations of this Agreement) and UC Davis would assign to the Authority its interests in pending water right permit Application 30358A (on file with the State Water Resources Control Board Application, on and subject to terms agreeable to the Authority and UC Davis. The water supply agreement shall contain indemnification provisions consistent with sections 8.2 and 8.4 of this Agreement. If the Authority and UC Davis do not finally approve and execute the UC Davis water supply agreement by _____, then the Authority may proceed with the Project without UC Davis' participation. This deadline may be extended by the Board.

7.7. Reduction in Capacity of Project Facilities. If, for any reason (including, but not limited to, water supply availability, drought, restrictions on diversion, regulatory requirements, damage, or maintenance), the daily water delivery capacity of the Project Facilities is less than 51.8 mgd at any time, and such reduction is not due to an act or omission of any Project Participant, then the available capacity shall be allocated among the Project Participants based on their percentage shares of Dedicated Capacity as set forth in section 7.3. 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. If reductions in both the daily water delivery capacity of 51.8 mgd and the annual limit of 46,137 af/yr 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.

7.8. Ownership of Project Facilities. Except as otherwise provided by section 6.3, all Project Facilities shall be owned by and held in the name of the Authority for the benefit of the Project Participants in accordance with the terms of this Agreement.

7.9. Water Right Application Assignment. Upon execution of this Agreement, the City of Davis shall assign its interests in pending water right Application 30358A (on file with the State Water Resources Control Board), the City of Woodland shall assign its interests in pending water right Application 30358B (on file with the State Water Resources Control Board) to the Authority, and the Parties shall ask UC Davis to assign its interests in Application 30358A, to the Authority. The Authority thereafter shall diligently prosecute these applications, or any portions of these applications that have been assigned to the Authority, for the benefit of the Parties, and for the benefit of UC Davis, if UC Davis has assigned its interests in Application 30358A to the Authority.

8. INDEMNIFICATION.

8.1. By Authority. The directors, officers, employees and volunteers of the Authority shall be entitled to defense and indemnification by the Authority 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 Authority 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 Authority's performance under this Agreement or failure to perform under this Agreement. The Parties acknowledge that the Authority's insurance and indemnity-related costs will be costs of Authority operations for which they will be liable for under section 6.

8.2. By a Party. Each Party shall indemnify, defend, protect, and hold harmless the Authority and the other Party, and their respective 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.

8.3. 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.

8.4. Authority Not Liable for Operation Beyond Point of Delivery. The Authority and its 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 Authority pursuant to section 8.2 from any such damages, claims or liability. The Authority shall have no right, title or interest in Project water after the water has passed the point of delivery to a Party.

8.5. 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 Authority shall indemnify and hold harmless the Party pursuant to section 8.1 from any such damages, claims or liability.

8.6. The indemnification and hold harmless provisions of this section 8 shall apply in lieu of the right of contribution provisions at Government Code sections 895-895.8.

9. TERM, WITHDRAWAL AND DISSOLUTION.

9.1. Term. This Agreement and the Authority shall continue in existence until terminated and dissolved in accordance with the terms of this section 9.

9.2. Withdrawal Prior to Bonds. Prior to Board approval of the issuance of any bonded indebtedness or certificates of participation, either Party may terminate this Agreement and dissolve the Authority 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 Authority 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 9.2, 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 Authority among the Project Participants: (a) according to the percentages in Dedicated Capacity and the annual limits specified in the first part of section 7.3, if the Authority and UC Davis have entered into a UC Davis water supply contract pursuant to section 7.6 and UC Davis has assigned its interests in Application 30358A to the Authority; or (b) according to the percentages in Dedicated Capacity and the annual limits specified in the second part of section 7.3, if the Authority and UC Davis have not entered into a UC Davis water supply contract pursuant to section 7.6 and UC Davis has not assigned its interests in Application 30358A to the Authority.

9.3. Dissolution After Bonds. After Board approval of the issuance of any bonded indebtedness or certificates of participation, this Agreement and the Authority may be terminated and dissolved by approval of the Parties expressed by resolution of the governing board of each Party approving a dissolution agreement pursuant to section 9.4. The Authority shall not be dissolved until all debts and liabilities of the Authority have been discharged or assumed in accordance with this Agreement and the dissolution agreement. During the outstanding term of any Authority bonds, certificates of participation or other indebtedness, this Agreement and the Authority 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 Authority as lawful and adequately protecting the interests of any holders of evidence of indebtedness of the Authority.

9.4. Dissolution Agreement. Subject to section 9.3 above, this Agreement and the Authority may be dissolved pursuant to a dissolution agreement approved by both Parties that provides for the dissolution of the Agreement and Authority, the utilization, distribution, transfer and assignment of the funds, assets and property (including any completed or partially constructed Project Facilities) of the Authority, and the transfer and assignment of the rights, liabilities and obligations of the Authority. If, at the time of dissolution,

the Authority 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. If, at the time of dissolution, the Authority has acquired any water right permit or license, then the dissolution agreement also must provide for the transfer and assignment of the permit or license to one of 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 Authority 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 Authority pursuant to a dissolution agreement approved pursuant to this section, the funds, assets, property, rights, liabilities and obligations of the Authority shall be utilized, distributed, transferred and assigned as provided by the dissolution agreement.

10. GENERAL PROVISIONS.

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

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

10.6. 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 Authority then in effect, and may be subject to such additional reasonable conditions of approval imposed by the Party approving the assignment or delegation.

10.7. 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.

10.8. 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 Authority shall require an amendment of this Agreement.

10.9. 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.

10.10. 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:	Woodland:
City Manager	City Manager
City of Davis	City of Woodland
23 Russell Blvd.	300 First St.
Davis, CA 95616	Woodland, CA 95695

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

10.11. 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 Joint Water Supply Project Facilities
Exhibit B	Project Schedule
Exhibit C	Project Service Area and Anticipated Water Right Place of Use

EXHIBIT A

List of Davis Woodland Joint Water Supply Project Facilities

[This list needs to be confirmed and expanded.]

I. Shared facilities -- Project facilities to be financed, constructed, owned and operated by the Authority:

- A. Regional facilities
 - 1. Regional water treatment plant
 - 2. Water intake/pump station
 - 3. Regional transmission pipelines (i.e., common pipelines that serve both parties and UC Davis)
 - 4. Regional water booster pump station

- B. Non-regional transmission facilities
 - 1. Davis/UC Davis transmission pipeline
 - 2. Woodland transmission pipeline

II. Individually-Owned Project Facilities -- Project Facilities to be financed and constructed by the Authority as part of the Project, but thereafter owned and operated by another agency:

- A. Woodland local facilities
- B. Davis local facilities
- C. UC Davis local facilities

The Project Facilities are shown and described in more detail in the _____, which is incorporated herein by this reference.

EXHIBIT B

Project Schedule

[To be prepared.]

EXHIBIT C

Project Service Area and Anticipated Water Right Place of Use

BARTKIEWICZ, KRONICK & SHANAHAN

PAUL M. BARTKIEWICZ
STEPHEN A. KRONICK
RICHARD P. SHANAHAN
ALAN B. LILLY
RYAN S. BEZERRA
JOSHUA M. HOROWITZ
STEPHEN M. SIPTROTH

A PROFESSIONAL CORPORATION
1011 TWENTY-SECOND STREET
SACRAMENTO, CALIFORNIA 95816-4907
(916) 446-4254
FAX (916) 446-4018
E-MAIL bks@bkslawfirm.com

JAMES M. BOYD, JR., Of Counsel

MEMORANDUM

TO: Woodland City Council

FROM: Richard P. Shanahan

RE: Proposed Davis-Woodland Water Authority Joint Powers Agreement

DATE: July 8, 2009

This memo responds to your request for an executive summary of the proposed *Davis-Woodland Water Authority Joint Powers Agreement* (“Agreement”), which soon will be considered by the Cities of Davis and Woodland. This executive summary has been prepared to assist the City Council in understanding the major provisions of the Agreement and deciding whether to approve it. The Agreement contains many significant terms. This executive summary only summarizes the Agreement and highlights some of the more significant provisions. If the City Council approves the Agreement, the City’s obligations and rights would be based on the more detailed Agreement and not this executive summary.

This summary is based on the draft Agreement dated June 11, 2009. The cities continue to review the Agreement and there may be subsequent changes.

Section 1. This section contains important defined words and phrases. The Agreement defines the “project” as the water supply project approved by the cities in 2007 in connection with the approval of the CEQA environmental impact report. The definitions of “capital costs,” “fixed operating costs” and “variable operating costs” are significant in relation to the Agreement financial provisions.

Section 2. This section explains the objectives of the Agreement and key background facts that lead to the Agreement. The Agreement continues a phased approach to the project and builds upon a series of memoranda of understanding approved by the cities beginning in 2000.

Section 3. This section creates the Davis-Woodland Water Authority (“Authority”) as a separate government agency authorized to construct and operate the project. Section 3.3 is an important provision that provides that the cities are not liable for the Authority’s debts, liabilities, contracts and obligations.

Section 4. This section establishes a Board of Directors to govern the Authority. It provides for a four member Board consisting of two city council members appointed by each city. The Agreement also provides for alternates.

Board action requires a majority vote of the entire Board of Directors (i.e., at least three votes). A tie vote results in no action.

Section 4.2 provides for the University of California – Davis (“University”), Reclamation District 2035, and Yolo County Flood Control and Water Conservation District to participate with the Authority as non-voting participating agencies. RD 2035 is a participating agency because the project may utilize its Sacramento River water diversion/intake facility. YCFWCWD is a 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.

The University remains an interested project participant. The Agreement contemplates that, after formation of the Authority, the Authority and University would enter into a water supply agreement that would govern the University’s rights and obligations relating to the project. (See section 7.6.) The University is not a party to the Agreement.

Sections 4.10 and 4.13 provide for key officers and staff consisting of a Treasurer/Auditor, Secretary, General Counsel and Project Manager. The Authority also could appoint other staff and contract for other services. Section 4.11 establishes an Executive Committee of each city’s Public Works Director (or designee) to assist and advise the Authority Board and staff.

Section 5. This section sets forth the basic purpose of the Agreement (to develop and operate the project) and a broad list of powers. Significantly, the Agreement authorizes and empowers the Authority to develop the project, but it does not obligate the Authority to do so. The Authority Board (which is controlled by city council appointees) retains the discretion whether and how to proceed with the project. Section 5.4 limits the cities from transferring Authority project water to a third-party or outside the water right permit authorized place of use.

Section 6. This section contains the financial provisions. It provides for an initial advance by each party for start-up funding (in an amount to be determined by the cities). It allocates Authority costs based on certain fixed percentages for capital and fixed operating costs and based on proportionate water use for variable operating costs (or such other method approved by the Authority Board). There are alternate tables for capital and fixed operating costs depending upon whether the University participates in the project. Section 6.3 allows a party to finance and construct through the Authority the initial capital costs and improvements of

the party's individually-owned project facilities. The section also provides for accounting, budget and audit requirements.

Significantly, section 6.4 would obligate each of the parties to pay its respective share of the Authority's capital, fixed operating and variable operating costs. It incorporates a "take or pay" obligation, meaning that a party is responsible for payment whether or not project construction is completed or whether water is actually being delivered to or utilized by the party.

Section 7. This section provides details concerning the development and operation of the water supply project. It specifies each party's dedicated capacity rights in the project and addresses changes and reductions in those capacity rights. The tables in section 7.3 set forth each party's entitlement (again with alternate tables depending upon the University's participation). The project facilities would be owned by the Authority.

Section 7.2 is an important provision that provides each city with control over certain project milestones and Agreement "off-ramps." It requires approval by each city council before the Authority issues debt, commences final engineering, or commences project construction. It is relatively easy for a city to cancel its participation in the Agreement prior to the issuance of any Authority bonds or certificates of participation. (See also section 9.) After the Authority issues any debt (which would require city council approval), the city's commitment becomes more binding.

Section 8. This section sets forth indemnity and related obligations. It imposes a broad indemnity obligation on the Authority, which would be supported by insurance to be purchased by the Authority (which would become a fixed operating cost to be paid by the cities). A city would be required to indemnify the Authority and other party for any liability arising out of the city's performance of or failure to perform the Agreement.

Section 9. This section addresses the termination of the Agreement and dissolution of the Authority. Prior to the issuance of any Authority debt, either city easily may terminate the Agreement and dissolve the Authority by giving 90 days notice to the other party. After Authority debt, though, it is more difficult to terminate Agreement and dissolve the Authority. Doing so would require a separate dissolution agreement between the cities as provided in sections 9.3 and 9.4.

Section 10. This section sets forth general legal provisions. Section 10.8 provides that the Agreement may be amended from time to time by the two city councils to reflect changing conditions and circumstances.

Exhibits. There are a few exhibits: a list of the shared project facilities and individually-owned project facilities; a preliminary project schedule; and, a map of the project service area and anticipated water right place of use.